Montana Legislative History

Chapter: 466 Session L: 2005
Bill Number: 159 House

Checklist of Bill History

- History and Final Status Sheet ☑
- Introduced Bill ☑
- Fiscal Note ☑
- Third Reading Bill ☐
- Final Version of Bill ☐

House	Senate
Committee: Business & Labor	Committee: Business, Labor, & Economic Affairs
Hearing Date(s): 01/18/2005	Hearing Date(s): 03/23/2005
Committee Report: 01/18/2005	Committee Report: 03/23/2023

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: S.K. Marshall

Date: 01/17/2024

Notes:

Bill Draft Number: LC0190
Bill Type - Number: HB 159
Short Title: Revise unemployment insurance laws
Primary Sponsor: Joe McKenney (R) HD 18
Chapter Number: 466

Bill Actions - **Current Bill Progress:** Became Law

Bill Action Count: 53

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/29/2005			
(H) Signed by Governor	04/28/2005			
(H) Transmitted to Governor	04/19/2005			
(S) Signed by President	04/19/2005			
(H) Signed by Speaker	04/18/2005			
(C) Printed - New Version Available	04/14/2005			
(H) Returned from Enrolling	04/14/2005			
(H) Sent to Enrolling	04/12/2005			
(H) 3rd Reading Passed as Amended by Senate	04/12/2005	96	0	
(H) Scheduled for 3rd Reading	04/12/2005			
(H) 2nd Reading Senate Amendments Concurred	04/11/2005	100	0	
(H) Scheduled for 2nd Reading	04/11/2005			
(S) Returned to House with Amendments	04/01/2005			
(S) 3rd Reading Concurred	04/01/2005	50	0	
(S) Scheduled for 3rd Reading	04/01/2005			
(S) 2nd Reading Concurred on Voice Vote	03/31/2005	50	0	
(S) Scheduled for 2nd Reading	03/31/2005			
(S) Scheduled for 2nd Reading	03/30/2005			
(S) Scheduled for 2nd Reading	03/29/2005			
(C) Printed - New Version Available	03/23/2005			
(S) Committee Report--Bill Concurred as Amended	03/23/2005			(S) Business, Labor, and Economic Affairs
(S) Committee Executive Action--Bill Concurred as Amended	03/23/2005	9	0	(S) Business, Labor, and Economic Affairs
(S) Hearing	03/23/2005			(S) Business, Labor, and Economic Affairs
(S) Hearing Canceled	03/09/2005			(S) Business, Labor, and Economic Affairs
(S) Referred to Committee	03/04/2005			(S) Business, Labor, and Economic Affairs
(S) First Reading	03/04/2005			
(H) Transmitted to Senate	01/20/2005			

(H) 3rd Reading Passed	01/20/2005	93	7	
(H) Scheduled for 3rd Reading	01/20/2005			
(H) 2nd Reading Passed	01/19/2005	94	6	
(H) Scheduled for 2nd Reading	01/19/2005			
(H) Committee Report--Bill Passed	01/18/2005			(H) Business and Labor
(H) Committee Executive Action--Bill Passed	01/18/2005	18	0	(H) Business and Labor
(H) Hearing	01/18/2005			(H) Business and Labor
(H) Fiscal Note Printed	01/10/2005			
(H) Fiscal Note Received	01/10/2005			
(H) Referred to Committee	01/05/2005			(H) Business and Labor
(H) Fiscal Note Requested	12/28/2004			
(C) Introduced Bill Text Available Electronically	12/21/2004			
(H) Introduced	12/21/2004			
(C) Pre-Introduction Letter Sent	12/16/2004			
(C) Draft in Assembly/Executive Director Review	12/15/2004			
(C) Draft in Final Drafter Review	12/15/2004			
(C) Draft in Input/Proofing	12/14/2004			
(C) Bill Draft Text Available Electronically	12/14/2004			
(C) Draft to Drafter - Edit Review [JLN]	12/14/2004			
(C) Draft in Edit	12/14/2004			
(C) Draft in Legal Review	12/08/2004			
(C) Draft to Requester for Review	11/19/2004			
(C) Draft On Hold	10/29/2004			
(C) Draft to Requester for Review	10/18/2004			
(C) Draft On Hold	09/22/2004			
(C) Draft Request Received	07/19/2004			

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name Mi
Requester	Economic Affairs Interim Committee	
Drafter	Campbell	Bart
By Request Of	Department of Labor and Industry	
Primary Sponsor	McKenney	Joe

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Revenue, State	Revenue	Simple	REVS
Unemployment Insurance (see also: Labor and Employment)		Simple	UNEM

Additional Bill Information

Fiscal Note Probable: Yes
Preintroduction Required: Y
Session Law Ch. Number: 466
DEADLINE
Category: Revenue Bills
Transmittal Date: 04/04/2005
Return (with 2nd house amendments) Date: 04/16/2005

Section Effective Dates

Section(s)	Effective Date	Date Qualified
Section 9	01-JAN-06	
Sections 1-8 and 10-16	28-APR-05	

FISCAL NOTE

Bill #: HB0159 **Title:** Revise unemployment insurance laws

Primary Sponsor: McKenney, J **Status:** As Introduced

Sponsor signature Date David Ewer, Budget Director Date

Fiscal Summary

	FY 2006 Difference	FY 2007 Difference
Expenditures:		
General Fund	$0	$0
Federal Special Revenue	$17,250	$0
Revenue:		
General Fund	$0	$0
Federal Special Revenue	$17,250	$0
Net Impact on General Fund Balance:	$0	$0

☐ Significant Local Gov. Impact ☐ Technical Concerns

☐ Included in the Executive Budget ☐ Significant Long-Term Impacts

☐ Dedicated Revenue Form Attached ☒ Needs to be included in HB 2

Fiscal Analysis

ASSUMPTIONS:

Department of Labor & Industry

1. HB 159 clarifies unemployment insurance statutes, revises laws relating to the transfer of UI tax functions from Department of Revenue, and clarifies transfers of experience ratings from a predecessor to a successor employer.
2. Section 9 outlines procedures for the substitution, merger, transfer, or acquisition of an employer account and experience rating by a successor employing unit (termed "SUTA dumping").
3. The department estimates implementation of the SUTA dumping computerized detection software to take 150 hours and will cost $17,250 ($115 x 150 hours).
4. The U. S. Department of Labor has indicated that it may provide supplemental funds to assist states in implementing the SUTA dumping detection software, but the amount of supplemental funds and the availability date of funds is unknown at this time.
5. SUTA dumping detection functions will be staffed by existing staff.

FISCAL IMPACT:

	FY 2006 Difference	FY 2007 Difference
Expenditures:		
Operating Expenses	$17,250	$0
Funding of Expenditures:		
Federal Special Revenue (03)	$17,250	$0
Revenues:		
Federal Special Revenue (03)	$17,250	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):		
Federal Special Revenue (03)	$0	$0

HOUSE BILL NO. 159

INTRODUCED BY J. MCKENNEY

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING UNEMPLOYMENT INSURANCE LAWS; EXCLUDING SUBSIDIES RECEIVED PURSUANT TO THE ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE FOR OLDER WORKERS PROGRAM FROM THE DEFINITION OF "WAGES"; CLARIFYING ALIEN SERVICES AND DESCRIBING ELECTION JUDGE SERVICES THAT ARE EXCLUDED FROM THE DEFINITION OF "EMPLOYMENT"; REVISING LAWS RELATING TO THE TRANSFER OF UNEMPLOYMENT INSURANCE CONTRIBUTION FUNCTIONS FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF LABOR AND INDUSTRY; SPECIFYING PROGRAMS TO BE SUPPORTED BY MONEY FROM THE EMPLOYMENT SECURITY ACCOUNT; REVISING THE TIME PERIOD FOR CONTESTING CLASSIFICATION AND CONTRIBUTION RATES; REVISING RATE SCHEDULES; REVISING PROCEDURES FOR THE TRANSFER OF EXPERIENCE RATINGS FROM A PREDECESSOR TO A SUCCESSOR EMPLOYER AND PROVIDING PENALTIES FOR WRONGFULLY OBTAINING A LOWER EXPERIENCE RATING; ESTABLISHING PENALTY AND INTEREST ASSESSMENTS FOR LATE FILINGS AND FAILURE TO RESPOND TO DEPARTMENT SUBPOENAS; REVISING PROCEDURES FOR ELIGIBILITY AND FOR FILING UNEMPLOYMENT INSURANCE BENEFIT CLAIMS; AMENDING SECTIONS 39-51-201, 39-51-204, 39-51-301, 39-51-302, 39-51-409, 39-51-1110, 39-51-1206, 39-51-1218, 39-51-1219, 39-51-1301, 39-51-1303, 39-51-2102, 39-51-2104, AND 39-51-2402, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the

arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the base period means the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which the individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(10) "Employing unit" means any individual or organization, ~~(~~including the state government and any of its political subdivisions or instrumentalities or an Indian tribe or tribal unit~~)~~, partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person that has or had in its employ one or more individuals performing services for it within this state, except as provided under 39-51-204(1)(a) and (1)(q). All individuals performing services within this state for any employing unit that maintains two or more separate

establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(11) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to be paid and from which all benefits provided under this chapter must be paid.

(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanton disregard of and for the rights, ~~or~~ title, or interest of a fellow employee or the employer.

(14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

(15) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under a contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e).

(17) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or

postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) ~~Notwithstanding subsection (17)(a), all~~ All universities in this state are institutions of higher education for purposes of this part.

(18) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

(19) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

(20) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(21) "Tribal unit" means an Indian tribe and any tribal subdivision~~,~~ or subsidiary~~,~~ or any business enterprise that is wholly owned by that tribe.

(22) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

(23) (a) "Wages", unless specifically exempted under subsection (23)(b), means all remuneration payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including

health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules; ~~or~~

(iii) a no-additional-cost service; or

(iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers program, 19 U.S.C. 2318.

(24) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(25) An individual's "weekly benefit amount" means the amount of benefits that the individual would be entitled to receive for 1 week of total unemployment."

Section 2. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" ~~is~~ means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the

employee's main duties, carries or delivers papers.

(d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

(e) service performed by a cosmetologist or barber who is licensed under Title 37, chapter 31, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a salon or shop, as defined in 37-31-101, and the contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the salon or shop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership, members of a member-managed limited liability company that has filed with the secretary of state, or partners in a limited liability partnership that has filed with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed as a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

(n) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in 5 U.S.C. 8501(1)(I) and section 3306(c)(6) of the Federal Unemployment Tax Act;

(s) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(t) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(u) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(w) service performed by an alien ~~admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act~~ as identified in 8 U.S.C. 1101(a)(15)(F), (a)(15)(H)(ii)(a), (a)(15)(J), (a)(15)(M), or (a)(15)(Q);

(x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for

another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873;

(y) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian; ~~or~~

(z) service performed by an individual as an official, including a timer, referee, umpire, or judge, at an amateur athletic event; or

(aa) services performed by an election judge appointed pursuant to 13-4-101 if the remuneration received for those services is less than $1,000 in the calendar year.

(2) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act."

Section 3. Section 39-51-301, MCA, is amended to read:

"39-51-301. Administration -- duties and powers of department. (1) It is the duty of the department to administer this chapter and it may adopt, amend, or rescind rules to employ persons, make expenditures, require reports, make investigations, and take action ~~as~~ that it considers necessary or suitable in administering this chapter.

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and must have an official seal, which is judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly inform the governor and the legislature and make recommendations with respect to the change.

(4) The department and the board may issue subpoenas and compel testimony and the production of evidence, including books and records, in regard to any investigation or proceeding under this chapter.

~~(5) The department may delegate to the department of revenue all duties associated with the administration of unemployment insurance contributions and the employment security account. The duties must be carried out in conformity with the requirements of the program budget plan with the United States department of labor. The department of revenue must receive funds from the department for the performance of the delegated~~

~~duties. The department of revenue has rulemaking authority with respect to any function or duty delegated to the department of revenue pursuant to this section.~~

~~(6) The department may revoke its delegation to the department of revenue at any time.~~

~~(7)~~(5) Employees transferring from the department of revenue to the department as a result of the termination of the delegation of duties ~~in subsection (5)~~ associated with unemployment insurance contribution functions are entitled to all rights, including those under 2-15-131, possessed as a state officer or employee before transferring, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy including the State Employee Protection Act. Employees transferring must be considered internal applicants by the department of revenue for recruitment purposes for 1 year from the date of the termination of the delegation of duties ~~in subsection (5)~~ associated with unemployment insurance contribution functions.

~~(8)~~(6) The department shall succeed the department of revenue in its rights to property relating to the termination of the delegation of duties ~~in subsection (5)~~ associated with unemployment insurance contribution functions to the extent that is consistent with federal property transfer policy. The property includes real property, records, office equipment, forms, supplies, and contracts other than the program budget plan with the United States department of labor.

~~(9)~~(7) (a) The termination of the delegation of duties ~~in subsection (5)~~ associated with unemployment insurance contribution functions does not affect the validity of any pending judicial or administrative proceeding.

(b) All appeals that have not been heard prior to the termination of the delegation of duties ~~in subsection (5)~~ associated with unemployment insurance contribution functions must be made in accordance with the procedures identified in 39-51-1109.

(c) The department must be substituted for the department of revenue and succeed to all audits, determinations, and other actions following the date of the termination of the delegation of duties ~~in subsection (5)~~ associated with unemployment insurance contribution functions.

~~(10)~~(8) The rights, privileges, and duties of the holders of bonds and other obligations issued and of the parties to contracts, leases, indentures, and other transactions entered into before the termination of the delegation of duties ~~in subsection (5)~~ associated with unemployment insurance contribution functions remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by reason of the delegation of duties. The department is substituted for the department of revenue and~~, subject to the provisions of subsection (5),~~ succeeds to the rights and duties under the provisions of those bonds, contracts,

leases, indentures, and other transactions. The provisions of this subsection ~~(10)~~ do not apply to the program budget plan agreement between the department and the United States department of labor."

Section 4. Section 39-51-302, MCA, is amended to read:

"39-51-302. Administrative rules. ~~(1)~~ The department may adopt procedural and substantive rules necessary to implement this chapter.

~~(2) The department shall delegate rulemaking authority to the department of revenue with respect to any function or duty delegated to the department of revenue pursuant to 39-51-301(5).~~"

Section 5. Section 39-51-409, MCA, is amended to read:

"39-51-409. Employment security account. (1) There is an account created in the state special revenue fund called the employment security account.

(2) Money deposited in the employment security account may be appropriated to the department for payment of:

(a) unemployment insurance benefits;

(b) expenses incurred in collecting money deposited in the account;

(c) expenses incurred for the employment offices established in 39-51-307, including expenses for providing services to the business community;

(d) expenses incurred for the apprenticeship and training program;

(e) expenses for department research and analysis functions that provide employment, wage, and economic data; and

(f) expenses for department functions pertaining to wage and hour laws, prevailing wages, and collective bargaining.

~~(2)~~(3) The department may transfer funds from the employment security account to the unemployment insurance fund account provided for in 39-51-402 upon receiving approval from the budget director that the transfer will not decrease the money in the account below the level appropriated by the legislature to provide for the employment services programs identified in subsection (2).

~~(3)~~(4) The department may transfer appropriation authority in employment services programs between the federal special revenue and the state special revenue fund types."

Section 6. Section 39-51-1110, MCA, is amended to read:

"39-51-1110. Refunds to employers. (1) If an employer claims an adjustment or the department ~~or its delegate, as provided in 39-51-301,~~ determines through an examination of the employer's account that the employer has overpaid the amount due, the amount of the overpayment must be applied to future unemployment insurance obligations or must be refunded to the employer. The credit or refund may be allowed only if the claim is filed, or the determination is made, within a 5-year period after the date on which any taxes, penalty, or interest became due or within ~~one~~ 1 year from the date the payment is made, whichever is later. The department ~~or its delegate pursuant to 39-51-301(5),~~ shall credit or refund the amount to the employer, without interest.

(2) If the department ~~or its delegate pursuant to 39-51-301(5),~~ determines that an employer has paid taxes to this state under this chapter but the taxes should have been paid to another state under a similar act of the other state, a transfer of the taxes to the other state must be made upon discovery or, upon proof of payment that the other state has been fully paid, then a refund to the employer must be made upon application without limitation of time.

(3) If this chapter is not certified by the secretary of labor under 26 U.S.C. 3304 for any year, then refunds must be made of all taxes required under this chapter from employers for that year."

Section 7. Section 39-51-1206, MCA, is amended to read:

"39-51-1206. Department to provide for notification of employers of their classification and contribution rate. (1) The department shall by ~~regulation~~ rule provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. Except as provided in subsection (2), the notification is final for all purposes unless ~~and until~~ the employer files a written request with the department for a redetermination or hearing on the classification and rate of contribution within 30 days after ~~receipt~~ the mailing date of the notice. The department may extend the 30-day period for good cause.

(2) The department may make changes in classification and rate of contribution upon an oral request for redetermination from the employer if the department finds that the department has made an error."

Section 8. Section 39-51-1218, MCA, is amended to read:

"39-51-1218. Rate schedules.

SCHEDULES OF CONTRIBUTION RATES - Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
Minimum Ratio of Fund to Total Wages	(.0245)	(.0225)	(.0200)	(.0170)

Average Tax Rate	1.37	1.57	1.77	1.97
Rate Class	Contribution Rates for Eligible Employers			
1	0.00%	0.07%	0.27%	0.47%
2	0.07	0.27	0.47	0.67
3	0.27	0.47	0.67	0.87
4	0.47	0.67	0.87	1.07
5	0.67	0.87	1.07	1.27
6	0.87	1.07	1.27	1.47
7	1.07	1.27	1.47	1.67
8	1.27	1.47	1.67	1.87
9	1.47	1.67	1.87	2.07
10	1.67	1.87	2.07	2.27
Rate Class	Contribution Rates for Deficit Employers			
1	3.17%	3.37%	3.57%	3.77%
2	3.37	3.57	3.77	3.97
3	3.57	3.77	3.97	4.17
4	3.77	3.97	4.17	4.37
5	3.97	4.17	4.37	4.57
6	4.17	4.37	4.57	4.77
7	4.37	4.57	4.77	4.97
8	4.57	4.77	4.97	5.17
9	4.77	4.97	5.17	5.37
10	6.37	6.37	6.37	6.37

SCHEDULES OF CONTRIBUTION RATES - Part II

Sched. V	Sched. VI	Sched. VII	Sched. VIII	Sched. IX	Sched. X
(.0135)	(.0095)	~~(.00575)~~ (.0075)	(.0050)	(....)	(....)
2.17	2.37	2.57	2.77	2.97	3.17
Contribution Rates for Eligible Employers					
0.67%	0.87%	1.07%	1.27%	1.47%	1.67%

0.87	1.07	1.27	1.47	1.67	1.87
1.07	1.27	1.47	1.67	1.87	2.07
1.27	1.47	1.67	1.87	2.07	2.27
1.47	1.67	1.87	2.07	2.27	2.47
1.67	1.87	2.07	2.27	2.47	2.67
1.87	2.07	2.27	2.47	2.67	2.87
2.07	2.27	2.47	2.67	2.87	3.07
2.27	2.47	2.67	2.87	3.07	3.27
2.47	2.67	2.87	3.07	3.27	3.47
Contribution Rates for Deficit Employers					
3.97%	4.17%	4.37%	4.57%	4.77%	4.97%
4.17	4.37	4.57	4.77	4.97	5.17
4.37	4.57	4.77	4.97	5.17	5.37
4.57	4.77	4.97	5.17	5.37	5.57
4.77	4.97	5.17	5.37	5.57	5.77
4.97	5.17	5.37	5.57	5.77	5.97
5.17	5.37	5.57	5.77	5.97	6.17
5.37	5.57	5.77	5.97	6.17	6.37
5.57	5.77	5.97	6.17	6.37	6.37
6.37	6.37	6.37	6.37	6.37	6.37"

Section 9. Section 39-51-1219, MCA, is amended to read:

"39-51-1219. Procedures for ~~the~~ substitution, merger, transfer, or acquisition of ~~an~~ employer account by ~~a~~ successor employing unit -- prohibitions and penalties -- definitions. (1) (a) ~~Subject to the provisions of subsection (3), whenever any individual or organization (whether or not a covered employer)~~ If an employer in any manner succeeds to or acquires all or ~~substantially all~~ a portion of the trade or business of ~~an~~ another employer or transfers all or a portion of the employer's trade or business to another employer and both employers are under substantially common ownership, management, or control at the time of the succession, acquisition, or transfer, the experience rating record attributable to the predecessor employer must be transferred to and combined with the experience rating record of the successor employer. ~~who at the time of acquisition was a covered employer and whenever in respect to whom the department finds that the business of the predecessor~~

~~is continued solely by the successor:~~

~~(a)~~ (b) ~~the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor must, upon the joint application of the predecessor and the successor within 90 days after the acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and~~ In the case of a partial transfer of a trade or business, the portion of the experience rating record transferred from the predecessor employer to the successor employer must be based on the portion of the trade or business transferred. The portion must be determined in the same ratio as the payroll transferred to the successor employer in the 4 reported calendar quarters immediately preceding the date of the transfer.

(c) Whenever a transfer involves only a portion of the experience rating record and the predecessor employer or successor employer fails to supply the required payroll information to the department within 10 days after notification, the transfer must be based on estimates of the applicable payrolls.

~~(b)~~(d) ~~any~~ Any successor employer who was not an employer on the date of acquisition becomes a covered employer as of that date.

(e) A successor employer must be notified by the department in writing of the transfer of the experience rating record, and unless the successor employer appeals the transfer within 30 days of the date on which the notice was mailed, the successor employer's right to appeal the transfer is waived.

(2) (a) ~~Whenever any individual or organization (whether or not a covered employer) in any manner~~ If an employer transfers, succeeds to, or acquires all or a portion ~~part~~ of the trade or business of ~~an~~ a covered employer ~~who at the time of acquisition was a covered employer and whenever that~~ and the employers are not under substantially common ownership, management, or control, the predecessor employer and the successor employer have the option to transfer the applicable portion of the experience rating record from the predecessor employer to the successor employer if that portion of the trade or business is continued by the successor employer.~~:~~

~~(a)~~ (b) ~~so much of the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor as is attributable to the portion of the business transferred, as determined on a pro rata basis in the same ratio that the wages of covered employees properly allocable to the transferred portion of the business bear to the payroll of the predecessor in the last 4 completed calendar quarters immediately preceding the date of transfer, must, upon the~~ In order to make the transfer, a joint application for the transfer of the experience rating record must be made by ~~of~~ the predecessor employer and the successor employer within 90 days ~~after~~ of the acquisition and approval by the department.~~, be transferred to the successor employer for~~

~~the purpose of determining the successor's liability and rate of contribution; and~~

(c) In the case of a complete transfer of the trade or business, all of the experience rating record of the predecessor employer is transferred to the successor employer.

(d) In the case of a partial transfer of the trade or business, the portion of the experience rating record transferred from the predecessor employer to the successor employer must be based on the portion of the trade or business transferred. This portion must be determined in the same ratio as the payroll transferred to the successor employer in the 4 reported calendar quarters immediately preceding the date of transfer.

~~(b)~~(e) ~~any~~ A successor employer who was not an employer on the date of acquisition becomes a covered employer as of that date.

~~(3) (a)~~ (f) The 90-day period for filing the joint application may be extended at the discretion of the department.

~~(b) Whenever a predecessor covered employer has a deficit experience rating account as of the last computation date, the transfer provided for in subsections (1) and (2) is mandatory except when it is shown by substantial evidence that the management, the ownership, or both the management and ownership are not substantially the same for the successor as for the predecessor, in which case the successor shall begin with the rate of a new employer. Whenever a mandatory transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notice, the transfer must be based on estimates of the applicable payrolls. The successor must be notified in writing of the mandatory transfer, and unless the mandatory transfer is appealed within 30 calendar days, the right to appeal is waived.~~

~~(c) Whenever a predecessor covered employer has an eligible experience rating account as of the last computation date and when it is shown by substantial evidence that the management, the ownership, or both the management and the ownership are substantially the same for the successor as for the predecessor, the transfer provided for in subsections (1) and (2) is automatic. Whenever an automatic transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notification, the transfer must be based on estimates of the applicable payrolls. The successor must be notified in writing of the automatic transfer and shall request within 30 days of notification that the experience rating account of the predecessor not be transferred.~~

~~(4)~~(3) (a) If the successor employer was a covered employer prior to the date of the acquisition of all or a ~~part~~ portion of the ~~predecessor's~~ predecessor employer's trade or business and if:

(i) the employers are not under substantially common ownership, management, or control at the time

of acquisition, the ~~successor's~~ successor employer's rate of contribution, effective the first day of the calendar year immediately following the date of acquisition, is based on the combined experience of the predecessor employer and successor employer; or

(ii) the employers were under substantially common ownership, management, or control at the time of acquisition, the successor employer's experience rate must be combined with the predecessor employer's experience rate and must be recalculated and become effective at the beginning of the calendar quarter in which the acquisition occurred.

(b) If the successor employer was not a covered employer prior to the date of the acquisition of all or a ~~part~~ portion of the ~~predecessor's~~ predecessor employer's trade or business and the employers are not under substantially common ownership, management, or control, upon joint application by the employers, the ~~successor's~~ successor employer's rate is the rate ~~applicable~~ assigned to the predecessor employer ~~with respect to the period immediately preceding~~ as of the date of acquisition~~, but if~~. If there was more than one predecessor employer, the ~~successor's~~ successor employer's rate must be ~~a newly~~ computed ~~rate~~ based on the combined experience of the ~~predecessors~~ predecessor employers and becomes~~, becoming~~ effective immediately after the date of acquisition and ~~remaining~~ remains in effect for the balance of the rate year.

(4) The transfer of all or part of an employer's workforce to another employer must be considered a transfer of a trade or business if, as a result of the workforce transfer, the transferring employer is not any longer performing the trade or business with respect to the transferred workforce and the trade or business is performed by the employer to which the workforce is transferred.

(5) (a) The experience rating record of a predecessor trade or business may not be transferred to a person acquiring the trade or business if:

(i) the person is not otherwise an employer at the time of the acquisition; and

(ii) the department finds that the person acquired the trade or business solely or primarily for the purpose of obtaining a lower rate of contributions.

(b) A person subject to the provisions of subsection (5)(a) must be assigned the applicable new employer rate pursuant to 39-51-1217.

(6) Factors that the department may consider in determining if a person acquired a trade or business solely or primarily for the purpose of obtaining a lower rate of contributions include but are not limited to:

(a) the cost of acquisition;

(b) whether the person continued the trade or business operation;

(c) the length of time that the trade or business operation was continued after acquisition; and

(d) whether a substantial number of new employees were to perform duties unrelated to the trade or business operations conducted prior to the acquisition.

(7) A person who knowingly violates, attempts to violate, or provides advice on violating the provisions of this section is subject to the following penalties:

(a) If the person is an employer, the employer shall be assessed a penalty equal to 6% of the employer's average annual taxable wages used in computing the employer's most recent year's experience rating record. The penalty must be deposited in the penalty and interest account established in 39-51-1301(4).

(b) If the person is not an employer, the person is subject to a civil penalty of not more than $5,000. The penalty must be deposited in the penalty and interest account established in 39-51-1301(4).

(c) In addition to the penalties provided for in subsections (7)(a) and (7)(b), a person who violates a provision of this section:

(i) is subject to any other penalties prescribed by this chapter;

(ii) may be subject to a criminal penalty pursuant to 39-51-3204; and

(iii) may be charged with any other applicable criminal violations provided by law.

(8) For the purposes of this section, the following definitions apply:

(a) "Knowingly" means having actual knowledge of, acting with deliberate ignorance of, or reckless disregard for the prohibitions established in this section.

(b) "Person" includes an individual, trust, estate, partnership, association, company, or corporation.

(c) "Trade or business" includes an employer's workforce.

(9) The department shall establish procedures to identify the transfer or acquisition of a trade or business for the purposes of this section.

(10) This section must be interpreted and applied in a manner that meets the minimum requirements contained in any guidance or regulations issued by the United States department of labor."

Section 10. Section 39-51-1301, MCA, is amended to read:

"39-51-1301. Penalty and interest on past-due reports and taxes. (1) Failure to file reports and payments in a timely manner, as required under 39-51-603, 39-51-1103, and 39-51-1125, may subject an employer to penalty and interest, as provided ~~by 15-30-209~~ in subsection (2).

(2) The department may assess penalties and interest under this section as follows:

(a) a penalty of $25 for the failure to file reports or make payments in a timely manner;

(b) in addition to the late penalty provided in subsection (2)(a), a penalty of $50 if the department issues

a subpoena or makes a summary or jeopardy assessment, as provided in 39-51-1302, as the result of an employer's refusal or failure to provide requested information;

(c) in addition to the penalties in subsections (2)(a) and (2)(b), a penalty of $100 for failure to comply with a subpoena; and

(d) interest at the rate of 1.5% a month on any amounts owed to the department under this subsection (2) that are not paid in a timely manner.

(3) The department may waive all or any portion of any penalties and interest assessed pursuant to subsection (2).

~~(2)~~(4) There is an account in the federal special revenue fund. Penalties and interest collected for unemployment insurance obligations must be deposited in that account. Money deposited in that account and appropriated to the department ~~or transferred by the department to its delegate, pursuant to 39-51-301(5),~~ may ~~only~~ be used by the department ~~or its delegate~~ only to administer this chapter, including the detection and collection of unpaid taxes and overpayments of benefits to the extent that federal grant revenue is less than amounts appropriated for this purpose. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

~~(3)~~(5) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due unemployment insurance taxes must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose."

Section 11. Section 39-51-1303, MCA, is amended to read:

"39-51-1303. Collection of unpaid taxes. (1) The department~~, or its delegate pursuant to 39-51-301(5), has authority to~~ may enter into payment agreements with an employer to resolve unpaid taxes, penalty, and interest. Penalty or interest, or both penalty and interest, may be abated if an acceptable payment agreement is entered into and ~~adhered to~~ followed. Failure to meet the terms of the payment agreement voids the penalty and interest abatement, and the penalty and interest must be recomputed from the due date of the unpaid tax.

(2) If, after due notice, any employer, liable corporate officer, liable member or manager of a limited liability company referred to in 39-51-1105, or partner in a limited liability partnership defaults in any payment of taxes, penalties, or interest on the taxes and penalties, the department~~, or its delegate pursuant to 39-51-301(5),~~ may initiate a civil action in the name of the state to collect the amount due, and the employer, liable corporate officer, liable member or manager of a limited liability company ~~referred to in 39-51-1105~~, or partner in a limited liability partnership adjudged in default shall pay the costs of the action.

(3) An action for the collection of taxes due must be brought within 5 years from the date the original or amended report was filed or the assessment became due, whichever is later, or ~~it~~ the action is barred.

(4) The department~~, or its delegate pursuant to 39-51-301(5),~~ may pursue its remedy under 39-51-1304~~,~~ or this section, or both."

Section 12. Section 39-51-2102, MCA, is amended to read:

"39-51-2102. ~~Week~~ Commencement of week of unemployment -- ~~when deemed to commence~~. An individual's week of unemployment ~~shall be deemed to commence~~ commences only after ~~his registration at an unemployment office~~ the individual files a claim for unemployment insurance benefits with the unemployment insurance division and has registered for work with the individual's local job service, except as the department may by ~~regulation~~ rule otherwise prescribe."

Section 13. Section 39-51-2104, MCA, is amended to read:

"39-51-2104. General benefit eligibility conditions. (1) An unemployed individual is eligible to receive benefits for any week of total unemployment within the individual's benefit year only if the department finds that the individual:

(a) has filed a claim ~~at~~ and has ~~continued to report at an employment office~~ filed continued claims in accordance with rules that the department may prescribe~~, except that the department may by rule prescribe that in cases in which it finds the requirements oppressive or inconsistent with the purposes of this chapter, an unemployed individual may file a claim and report for work by mail or through other governmental agencies~~;

(b) is able to work, is available for work, and is seeking work. A claimant is not considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if the failure is because of:

(i) an illness or disability that occurs after the claimant has ~~registered for work~~ filed or reopened a claim for unemployment insurance benefits and suitable work has not been offered to the claimant after the beginning of the illness or disability; or

(ii) enrollment as a student as provided in 39-51-2307.

(c) prior to the first week for which the individual is paid benefits, has been totally unemployed for a waiting period of 1 week. A week is not counted as a week of total unemployment for the purposes of this subsection:

(i) if benefits have been paid for that week;

(ii) unless the individual was eligible for benefits during the week;

(iii) unless it occurs within the benefit year of the claimant;

(iv) unless it occurs after benefits first could become payable to any individual under this chapter.

(d) has registered for work with the individual's local job service office unless the individual is excused by department rule from registering for work.

(2) (a) The department shall establish a profiling system to identify individuals who are likely to exhaust their regular benefits and who are in need of reemployment services.

(b) In addition to the requirements listed in subsection (1), an individual identified pursuant to subsection (2)(a) may be required to participate in reemployment services in order to be eligible for unemployment benefits.

(c) The requirement for participation in reemployment services may be waived if the department determines that:

(i) the individual has completed reemployment services; or

(ii) the individual's failure to participate in reemployment services is justifiable."

Section 14. Section 39-51-2402, MCA, is amended to read:

"39-51-2402. Initial determination -- redetermination. (1) A representative designated by the department and referred to as a deputy shall promptly examine ~~the~~ a claim for benefits, and~~,~~ on the basis of the deputy's findings of fact ~~facts the deputy has found~~, the deputy shall determine whether or not the claim is valid. If the claim is valid, the deputy ~~will~~ shall determine the week the benefits commence, the weekly benefit amount payable, and the maximum benefit amount. The deputy may refer the claim or any question involved in the claim to an appeals referee who shall make the decision on the claim in accordance with the procedure prescribed in 39-51-2403. ~~With respect to a determination, redetermination, or appeal by a claimant involving wages, the issue must be resolved in accordance with procedures for unemployment insurance benefit claimant appeals, as prescribed in 15-2-302 and 15-30-257 during the time that the department delegated the duties associated with the administration of unemployment insurance contributions to the department of revenue pursuant to 39-51-301.~~ The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons for reaching the decision.

(2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant and other interested parties of the amended decision and the reasons for the decision.

~~(3) A determination or redetermination of an initial or additional claim may not be made under this section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party.~~

~~(4)~~(3) A determination or redetermination is final unless an interested party entitled to notice of the decision applies for reconsideration of the determination or appeals the decision within 10 days after the notification was mailed to the interested party's last-known address. The 10-day period may be extended for good cause.

~~(5)~~(4) Except as provided in subsection ~~(6)~~ (5), a redetermination of a claim for benefits may not be made after 2 years from the date of the initial determination.

~~(6)~~(5) A redetermination may be made within 3 years from the date of the initial determination of a claim if the initial determination was based on a false claim, misrepresentation, or failure to disclose a material fact by the claimant or the employer."

NEW SECTION. **Section 15. Effective dates.** (1) [Sections 1 through 8, sections 10 through 14, and this section] are effective on passage and approval.

(2) [Section 9] is effective January 1, 2006.

- END -

HOUSE BILL NO. 159

INTRODUCED BY MCKENNEY

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING UNEMPLOYMENT INSURANCE LAWS; EXCLUDING SUBSIDIES RECEIVED PURSUANT TO THE ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE FOR OLDER WORKERS PROGRAM FROM THE DEFINITION OF "WAGES"; CLARIFYING ALIEN SERVICES AND DESCRIBING ELECTION JUDGE SERVICES THAT ARE EXCLUDED FROM THE DEFINITION OF "EMPLOYMENT"; REVISING LAWS RELATING TO THE TRANSFER OF UNEMPLOYMENT INSURANCE CONTRIBUTION FUNCTIONS FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF LABOR AND INDUSTRY; SPECIFYING PROGRAMS TO BE SUPPORTED BY MONEY FROM THE EMPLOYMENT SECURITY ACCOUNT; REVISING THE TIME PERIOD FOR CONTESTING CLASSIFICATION AND CONTRIBUTION RATES; REVISING RATE SCHEDULES; REVISING PROCEDURES FOR THE TRANSFER OF EXPERIENCE RATINGS FROM A PREDECESSOR TO A SUCCESSOR EMPLOYER AND PROVIDING PENALTIES FOR WRONGFULLY OBTAINING A LOWER EXPERIENCE RATING; ESTABLISHING PENALTY AND INTEREST ASSESSMENTS FOR LATE FILINGS AND FAILURE TO RESPOND TO DEPARTMENT SUBPOENAS; REVISING PROCEDURES FOR ELIGIBILITY AND FOR FILING UNEMPLOYMENT INSURANCE BENEFIT CLAIMS; AMENDING SECTIONS 39-51-201, 39-51-204, 39-51-301, 39-51-302, 39-51-409, 39-51-1110, 39-51-1206, 39-51-1218, 39-51-1219, 39-51-1301, 39-51-1303, 39-51-2102, 39-51-2104, AND 39-51-2402, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the

arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the base period means the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which the individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(10) "Employing unit" means any individual or organization, ~~(~~including the state government and any of its political subdivisions or instrumentalities or an Indian tribe or tribal unit~~)~~, partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person that has or had in its employ one or more individuals performing services for it within this state, except as provided under 39-51-204(1)(a) and (1)(q). All individuals performing services within this state for any employing unit that maintains two or more separate

establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(11) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to be paid and from which all benefits provided under this chapter must be paid.

(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanton disregard of and for the rights, ~~or~~ title, or interest of a fellow employee or the employer.

(14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

(15) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under a contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e).

(17) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or

postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) ~~Notwithstanding subsection (17)(a), all~~ All universities in this state are institutions of higher education for purposes of this part.

(18) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

(19) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

(20) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(21) "Tribal unit" means an Indian tribe and any tribal subdivision~~,~~ or subsidiary~~,~~ or any business enterprise that is wholly owned by that tribe.

(22) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

(23) (a) "Wages", unless specifically exempted under subsection (23)(b), means all remuneration payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including

health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules; ~~or~~

(iii) a no-additional-cost service; or

(iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers program, 19 U.S.C. 2318.

(24) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(25) An individual's "weekly benefit amount" means the amount of benefits that the individual would be entitled to receive for 1 week of total unemployment."

Section 2. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" ~~is~~ means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the

employee's main duties, carries or delivers papers.

(d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

(e) service performed by a cosmetologist or barber who is licensed under Title 37, chapter 31, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a salon or shop, as defined in 37-31-101, and the contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the salon or shop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership, members of a member-managed limited liability company that has filed with the secretary of state, or partners in a limited liability partnership that has filed with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed as a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

(n) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in 5 U.S.C. 8501(1)(I) and section 3306(c)(6) of the Federal Unemployment Tax Act;

(s) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(t) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(u) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(w) service performed by an alien ~~admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act~~ as identified in 8 U.S.C. 1101(a)(15)(F), (a)(15)(H)(ii)(a), (a)(15)(J), (a)(15)(M), or (a)(15)(Q);

(x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for

another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873;

(y) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian; ~~or~~

(z) service performed by an individual as an official, including a timer, referee, umpire, or judge, at an amateur athletic event; or

(aa) services performed by an election judge appointed pursuant to 13-4-101 if the remuneration received for those services is less than $1,000 in the calendar year.

(2) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act."

Section 3. Section 39-51-301, MCA, is amended to read:

"39-51-301. Administration -- duties and powers of department. (1) It is the duty of the department to administer this chapter and it may adopt, amend, or rescind rules to employ persons, make expenditures, require reports, make investigations, and take action ~~as~~ that it considers necessary or suitable in administering this chapter.

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and must have an official seal, which is judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly inform the governor and the legislature and make recommendations with respect to the change.

(4) The department and the board may issue subpoenas and compel testimony and the production of evidence, including books and records, in regard to any investigation or proceeding under this chapter.

~~(5) The department may delegate to the department of revenue all duties associated with the administration of unemployment insurance contributions and the employment security account. The duties must be carried out in conformity with the requirements of the program budget plan with the United States department of labor. The department of revenue must receive funds from the department for the performance of the delegated~~

~~duties. The department of revenue has rulemaking authority with respect to any function or duty delegated to the department of revenue pursuant to this section.~~

~~(6) The department may revoke its delegation to the department of revenue at any time.~~

~~(7)~~(5) Employees transferring from the department of revenue to the department as a result of the termination of the delegation of duties ~~in subsection (5)~~ associated with unemployment insurance contribution functions are entitled to all rights, including those under 2-15-131, possessed as a state officer or employee before transferring, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy including the State Employee Protection Act. Employees transferring must be considered internal applicants by the department of revenue for recruitment purposes for 1 year from the date of the termination of the delegation of duties ~~in subsection (5)~~ associated with unemployment insurance contribution functions.

~~(8)~~(6) The department shall succeed the department of revenue in its rights to property relating to the termination of the delegation of duties ~~in subsection (5)~~ associated with unemployment insurance contribution functions to the extent that is consistent with federal property transfer policy. The property includes real property, records, office equipment, forms, supplies, and contracts other than the program budget plan with the United States department of labor.

~~(9)~~(7) (a) The termination of the delegation of duties ~~in subsection (5)~~ associated with unemployment insurance contribution functions does not affect the validity of any pending judicial or administrative proceeding.

(b) All appeals that have not been heard prior to the termination of the delegation of duties ~~in subsection (5)~~ associated with unemployment insurance contribution functions must be made in accordance with the procedures identified in 39-51-1109.

(c) The department must be substituted for the department of revenue and succeed to all audits, determinations, and other actions following the date of the termination of the delegation of duties ~~in subsection (5)~~ associated with unemployment insurance contribution functions.

~~(10)~~(8) The rights, privileges, and duties of the holders of bonds and other obligations issued and of the parties to contracts, leases, indentures, and other transactions entered into before the termination of the delegation of duties ~~in subsection (5)~~ associated with unemployment insurance contribution functions remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by reason of the delegation of duties. The department is substituted for the department of revenue and~~, subject to the provisions of subsection (5),~~ succeeds to the rights and duties under the provisions of those bonds, contracts,

leases, indentures, and other transactions. The provisions of this subsection ~~(10)~~ do not apply to the program budget plan agreement between the department and the United States department of labor."

Section 4. Section 39-51-302, MCA, is amended to read:

"39-51-302. Administrative rules. ~~(1)~~ The department may adopt procedural and substantive rules necessary to implement this chapter.

~~(2) The department shall delegate rulemaking authority to the department of revenue with respect to any function or duty delegated to the department of revenue pursuant to 39-51-301(5).~~"

Section 5. Section 39-51-409, MCA, is amended to read:

"39-51-409. Employment security account. (1) There is an account created in the state special revenue fund called the employment security account.

(2) Money deposited in the employment security account may be appropriated to the department for payment of:

(a) unemployment insurance benefits;

(b) expenses incurred in collecting money deposited in the account;

(c) expenses incurred for the employment offices established in 39-51-307, including expenses for providing services to the business community;

(d) expenses incurred for the apprenticeship and training program;

(E) EXPENSES FOR DISPLACED HOMEMAKER PROGRAMS PROVIDED FOR UNDER 39-7-305;

~~(e)~~(F) expenses for department research and analysis functions that provide employment, wage, and economic data; and

~~(f)~~(G) expenses for department functions pertaining to wage and hour laws, prevailing wages, and collective bargaining.

~~(2)~~(3) The department may transfer funds from the employment security account to the unemployment insurance fund account provided for in 39-51-402 upon receiving approval from the budget director that the transfer will not decrease the money in the account below the level appropriated by the legislature to provide for the employment services programs identified in subsection (2).

~~(3)~~(4) The department may transfer appropriation authority in employment services programs between the federal special revenue and the state special revenue fund types."

Section 6. Section 39-51-1110, MCA, is amended to read:

"39-51-1110. Refunds to employers. (1) If an employer claims an adjustment or the department ~~or its delegate, as provided in 39-51-301,~~ determines through an examination of the employer's account that the employer has overpaid the amount due, the amount of the overpayment must be applied to future unemployment insurance obligations or must be refunded to the employer. The credit or refund may be allowed only if the claim is filed, or the determination is made, within a 5-year period after the date on which any taxes, penalty, or interest became due or within ~~one~~ 1 year from the date the payment is made, whichever is later. The department ~~or its delegate pursuant to 39-51-301(5),~~ shall credit or refund the amount to the employer, without interest.

(2) If the department ~~or its delegate pursuant to 39-51-301(5),~~ determines that an employer has paid taxes to this state under this chapter but the taxes should have been paid to another state under a similar act of the other state, a transfer of the taxes to the other state must be made upon discovery or, upon proof of payment that the other state has been fully paid, then a refund to the employer must be made upon application without limitation of time.

(3) If this chapter is not certified by the secretary of labor under 26 U.S.C. 3304 for any year, then refunds must be made of all taxes required under this chapter from employers for that year."

Section 7. Section 39-51-1206, MCA, is amended to read:

"39-51-1206. Department to provide for notification of employers of their classification and contribution rate. (1) The department shall by ~~regulation~~ rule provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. Except as provided in subsection (2), the notification is final for all purposes unless ~~and until~~ the employer files a written request with the department for a redetermination or hearing on the classification and rate of contribution within 30 days after ~~receipt~~ the mailing date of the notice. The department may extend the 30-day period for good cause.

(2) The department may make changes in classification and rate of contribution upon an oral request for redetermination from the employer if the department finds that the department has made an error."

Section 8. Section 39-51-1218, MCA, is amended to read:

"39-51-1218. Rate schedules.

SCHEDULES OF CONTRIBUTION RATES - Part I

Sched. I	Sched. II	Sched. III	Sched. IV

Minimum Ratio of Fund to Total Wages	(.0245)	(.0225)	(.0200)	(.0170)
Average Tax Rate	1.37	1.57	1.77	1.97
Rate Class	Contribution Rates for Eligible Employers			
1	0.00%	0.07%	0.27%	0.47%
2	0.07	0.27	0.47	0.67
3	0.27	0.47	0.67	0.87
4	0.47	0.67	0.87	1.07
5	0.67	0.87	1.07	1.27
6	0.87	1.07	1.27	1.47
7	1.07	1.27	1.47	1.67
8	1.27	1.47	1.67	1.87
9	1.47	1.67	1.87	2.07
10	1.67	1.87	2.07	2.27
Rate Class	Contribution Rates for Deficit Employers			
1	3.17%	3.37%	3.57%	3.77%
2	3.37	3.57	3.77	3.97
3	3.57	3.77	3.97	4.17
4	3.77	3.97	4.17	4.37
5	3.97	4.17	4.37	4.57
6	4.17	4.37	4.57	4.77
7	4.37	4.57	4.77	4.97
8	4.57	4.77	4.97	5.17
9	4.77	4.97	5.17	5.37
10	6.37	6.37	6.37	6.37

SCHEDULES OF CONTRIBUTION RATES - Part II

Sched. V	Sched. VI	Sched. VII	Sched. VIII	Sched. IX	Sched. X
(.0135)	(.0095)	~~(.00575)~~ (.0075)	(.0050)	(....)	(....)
2.17	2.37	2.57	2.77	2.97	3.17

Contribution Rates for Eligible Employers

0.67%	0.87%	1.07%	1.27%	1.47%	1.67%
0.87	1.07	1.27	1.47	1.67	1.87
1.07	1.27	1.47	1.67	1.87	2.07
1.27	1.47	1.67	1.87	2.07	2.27
1.47	1.67	1.87	2.07	2.27	2.47
1.67	1.87	2.07	2.27	2.47	2.67
1.87	2.07	2.27	2.47	2.67	2.87
2.07	2.27	2.47	2.67	2.87	3.07
2.27	2.47	2.67	2.87	3.07	3.27
2.47	2.67	2.87	3.07	3.27	3.47
Contribution Rates for Deficit Employers					
3.97%	4.17%	4.37%	4.57%	4.77%	4.97%
4.17	4.37	4.57	4.77	4.97	5.17
4.37	4.57	4.77	4.97	5.17	5.37
4.57	4.77	4.97	5.17	5.37	5.57
4.77	4.97	5.17	5.37	5.57	5.77
4.97	5.17	5.37	5.57	5.77	5.97
5.17	5.37	5.57	5.77	5.97	6.17
5.37	5.57	5.77	5.97	6.17	6.37
5.57	5.77	5.97	6.17	6.37	6.37
6.37	6.37	6.37	6.37	6.37	6.37"

Section 9. Section 39-51-1219, MCA, is amended to read:

"39-51-1219. Procedures for ~~the~~ substitution, merger, transfer, or acquisition of ~~an~~ employer account by ~~a~~ successor employing unit -- prohibitions and penalties -- definitions. (1) (a) ~~Subject to the provisions of subsection (3), whenever any individual or organization (whether or not a covered employer)~~ If an employer in any manner succeeds to or acquires all or ~~substantially all~~ a portion of the trade or business of ~~an~~ another employer or transfers all or a portion of the employer's trade or business to another employer and both employers are under substantially common ownership, management, or control at the time of the succession, acquisition, or transfer, the experience rating record attributable to the predecessor employer must be transferred to and combined with the experience rating record of the successor employer. ~~who at the time of acquisition was~~

~~a covered employer and whenever in respect to whom the department finds that the business of the predecessor is continued solely by the successor:~~

~~(a)~~ (b) ~~the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor must, upon the joint application of the predecessor and the successor within 90 days after the acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and~~ In the case of a partial transfer of a trade or business, the portion of the experience rating record transferred from the predecessor employer to the successor employer must be based on the portion of the trade or business transferred. The portion must be determined in the same ratio as the payroll transferred to the successor employer in the 4 reported calendar quarters immediately preceding the date of the transfer.

(c) Whenever a transfer involves only a portion of the experience rating record and the predecessor employer or successor employer fails to supply the required payroll information to the department within 10 days after notification, the transfer must be based on estimates of the applicable payrolls.

~~(b)~~(d) ~~any~~ Any successor employer who was not an employer on the date of acquisition becomes a covered employer as of that date.

(e) A successor employer must be notified by the department in writing of the transfer of the experience rating record, and unless the successor employer appeals the transfer within 30 days of the date on which the notice was mailed, the successor employer's right to appeal the transfer is waived.

(2) (a) ~~Whenever any individual or organization (whether or not a covered employer) in any manner~~ If an employer transfers, succeeds to, or acquires all or a portion ~~part~~ of the trade or business of ~~an~~ a covered employer ~~who at the time of acquisition was a covered employer and whenever that~~ and the employers are not under substantially common ownership, management, or control, the predecessor employer and the successor employer have the option to transfer the applicable portion of the experience rating record from the predecessor employer to the successor employer if that portion of the trade or business is continued by the successor employer.~~:~~

~~(a)~~ (b) ~~so much of the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor as is attributable to the portion of the business transferred, as determined on a pro rata basis in the same ratio that the wages of covered employees properly allocable to the transferred portion of the business bear to the payroll of the predecessor in the last 4 completed calendar quarters immediately preceding the date of transfer, must, upon the~~ In order to make the transfer, a joint application for the transfer of the experience rating record must be made by ~~of~~ the predecessor employer and the successor employer within

90 days ~~after~~ of the acquisition and approval by the department.~~, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and~~

(c) In the case of a complete transfer of the trade or business, all of the experience rating record of the predecessor employer is transferred to the successor employer.

(d) In the case of a partial transfer of the trade or business, the portion of the experience rating record transferred from the predecessor employer to the successor employer must be based on the portion of the trade or business transferred. This portion must be determined in the same ratio as the payroll transferred to the successor employer in the 4 reported calendar quarters immediately preceding the date of transfer.

~~(b)~~(e) ~~any~~ A successor employer who was not an employer on the date of acquisition becomes a covered employer as of that date.

~~(3) (a)~~ (f) The 90-day period for filing the joint application may be extended at the discretion of the department.

~~(b) Whenever a predecessor covered employer has a deficit experience rating account as of the last computation date, the transfer provided for in subsections (1) and (2) is mandatory except when it is shown by substantial evidence that the management, the ownership, or both the management and ownership are not substantially the same for the successor as for the predecessor, in which case the successor shall begin with the rate of a new employer. Whenever a mandatory transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notice, the transfer must be based on estimates of the applicable payrolls. The successor must be notified in writing of the mandatory transfer, and unless the mandatory transfer is appealed within 30 calendar days, the right to appeal is waived.~~

~~(c) Whenever a predecessor covered employer has an eligible experience rating account as of the last computation date and when it is shown by substantial evidence that the management, the ownership, or both the management and the ownership are substantially the same for the successor as for the predecessor, the transfer provided for in subsections (1) and (2) is automatic. Whenever an automatic transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notification, the transfer must be based on estimates of the applicable payrolls. The successor must be notified in writing of the automatic transfer and shall request within 30 days of notification that the experience rating account of the predecessor not be transferred.~~

~~(4)~~(3) (a) If the successor employer was a covered employer prior to the date of the acquisition of all or a ~~part~~ portion of the ~~predecessor's~~ predecessor employer's trade or business and if:

(i) the employers are not under substantially common ownership, management, or control at the time of acquisition, the ~~successor's~~ successor employer's rate of contribution, effective the first day of the calendar year immediately following the date of acquisition, is based on the combined experience of the predecessor employer and successor employer; or

(ii) the employers were under substantially common ownership, management, or control at the time of acquisition, the successor employer's experience rate must be combined with the predecessor employer's experience rate and must be recalculated and become effective at the beginning of the calendar quarter in which the acquisition occurred.

(b) If the successor employer was not a covered employer prior to the date of the acquisition of all or a ~~part~~ portion of the ~~predecessor's~~ predecessor employer's trade or business and the employers are not under substantially common ownership, management, or control, upon joint application by the employers, the ~~successor's~~ successor employer's rate is the rate ~~applicable~~ assigned to the predecessor employer ~~with respect to the period immediately preceding~~ as of the date of acquisition~~, but if~~. If there was more than one predecessor employer, the ~~successor's~~ successor employer's rate must be ~~a newly~~ computed ~~rate~~ based on the combined experience of the ~~predecessors~~ predecessor employers and becomes~~, becoming~~ effective immediately after the date of acquisition and ~~remaining~~ remains in effect for the balance of the rate year.

(4) The transfer of all or part of an employer's workforce to another employer must be considered a transfer of a trade or business if, as a result of the workforce transfer, the transferring employer is not any longer performing the trade or business with respect to the transferred workforce and the trade or business is performed by the employer to which the workforce is transferred.

(5) (a) The experience rating record of a predecessor trade or business may not be transferred to a person acquiring the trade or business if:

(i) the person is not otherwise an employer at the time of the acquisition; and

(ii) the department finds that the person acquired the trade or business solely or primarily for the purpose of obtaining a lower rate of contributions.

(b) A person subject to the provisions of subsection (5)(a) must be assigned the applicable new employer rate pursuant to 39-51-1217.

(6) Factors that the department may consider in determining if a person acquired a trade or business solely or primarily for the purpose of obtaining a lower rate of contributions include but are not limited to:

(a) the cost of acquisition;

(b) whether the person continued the trade or business operation;

(c) the length of time that the trade or business operation was continued after acquisition; and

(d) whether a substantial number of new employees were to perform duties unrelated to the trade or business operations conducted prior to the acquisition.

(7) A person who knowingly violates, attempts to violate, or provides advice on violating the provisions of this section is subject to the following penalties:

(a) If the person is an employer, the employer shall be assessed a penalty equal to 6% of the employer's average annual taxable wages used in computing the employer's most recent year's experience rating record. The penalty must be deposited in the penalty and interest account established in 39-51-1301(4).

(b) If the person is not an employer, the person is subject to a civil penalty of not more than $5,000. The penalty must be deposited in the penalty and interest account established in 39-51-1301(4).

(c) In addition to the penalties provided for in subsections (7)(a) and (7)(b), a person who violates a provision of this section:

(i) is subject to any other penalties prescribed by this chapter;

(ii) may be subject to a criminal penalty pursuant to 39-51-3204; and

(iii) may be charged with any other applicable criminal violations provided by law.

(8) For the purposes of this section, the following definitions apply:

(a) "Knowingly" means having actual knowledge of, acting with deliberate ignorance of, or reckless disregard for the prohibitions established in this section.

(b) "Person" includes an individual, trust, estate, partnership, association, company, or corporation.

(c) "Trade or business" includes an employer's workforce.

(9) The department shall establish procedures to identify the transfer or acquisition of a trade or business for the purposes of this section.

(10) This section must be interpreted and applied in a manner that meets the minimum requirements contained in any guidance or regulations issued by the United States department of labor."

Section 10. Section 39-51-1301, MCA, is amended to read:

"39-51-1301. Penalty and interest on past-due reports and taxes. (1) Failure to file reports and payments in a timely manner, as required under 39-51-603, 39-51-1103, and 39-51-1125, may subject an employer to penalty and interest, as provided ~~by 15-30-209~~ in subsection (2).

(2) The department may assess penalties and interest under this section as follows:

(a) a penalty of $25 for the failure to file reports or make payments in a timely manner;

(b) in addition to the late penalty provided in subsection (2)(a), a penalty of $50 if the department issues a subpoena or makes a summary or jeopardy assessment, as provided in 39-51-1302, as the result of an employer's refusal or failure to provide requested information;

(c) in addition to the penalties in subsections (2)(a) and (2)(b), a penalty of $100 for failure to comply with a subpoena; and

(d) interest at the rate of 1.5% a month on any amounts owed to the department under this subsection (2) that are not paid in a timely manner.

(3) The department may waive all or any portion of any penalties and interest assessed pursuant to subsection (2).

~~(2)~~(4) There is an account in the federal special revenue fund. Penalties and interest collected for unemployment insurance obligations must be deposited in that account. Money deposited in that account and appropriated to the department ~~or transferred by the department to its delegate, pursuant to 39-51-301(5),~~ may ~~only~~ be used by the department ~~or its delegate~~ only to administer this chapter, including the detection and collection of unpaid taxes and overpayments of benefits to the extent that federal grant revenue is less than amounts appropriated for this purpose. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

~~(3)~~(5) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due unemployment insurance taxes must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose."

Section 11. Section 39-51-1303, MCA, is amended to read:

"39-51-1303. Collection of unpaid taxes. (1) The department~~, or its delegate pursuant to 39-51-301(5), has authority to~~ may enter into payment agreements with an employer to resolve unpaid taxes, penalty, and interest. Penalty or interest, or both penalty and interest, may be abated if an acceptable payment agreement is entered into and ~~adhered to~~ followed. Failure to meet the terms of the payment agreement voids the penalty and interest abatement, and the penalty and interest must be recomputed from the due date of the unpaid tax.

(2) If, after due notice, any employer, liable corporate officer, liable member or manager of a limited liability company referred to in 39-51-1105, or partner in a limited liability partnership defaults in any payment of taxes, penalties, or interest on the taxes and penalties, the department~~, or its delegate pursuant to 39-51-301(5),~~ may initiate a civil action in the name of the state to collect the amount due, and the employer, liable corporate officer, liable member or manager of a limited liability company ~~referred to in 39-51-1105~~, or partner in a limited

liability partnership adjudged in default shall pay the costs of the action.

(3) An action for the collection of taxes due must be brought within 5 years from the date the original or amended report was filed or the assessment became due, whichever is later, or ~~it~~ the action is barred.

(4) The department~~, or its delegate pursuant to 39-51-301(5),~~ may pursue its remedy under 39-51-1304~~,~~ or this section, or both."

Section 12. Section 39-51-2102, MCA, is amended to read:

"39-51-2102. ~~Week~~ Commencement of week of unemployment -- ~~when deemed to commence~~. An individual's week of unemployment ~~shall be deemed to commence~~ commences only after ~~his registration at an unemployment office~~ the individual files a claim for unemployment insurance benefits with the unemployment insurance division and has registered for work with the individual's local job service, except as the department may by ~~regulation~~ rule otherwise prescribe."

Section 13. Section 39-51-2104, MCA, is amended to read:

"39-51-2104. General benefit eligibility conditions. (1) An unemployed individual is eligible to receive benefits for any week of total unemployment within the individual's benefit year only if the department finds that the individual:

(a) has filed a claim ~~at~~ and has ~~continued to report at an employment office~~ filed continued claims in accordance with rules that the department may prescribe~~, except that the department may by rule prescribe that in cases in which it finds the requirements oppressive or inconsistent with the purposes of this chapter, an unemployed individual may file a claim and report for work by mail or through other governmental agencies~~;

(b) is able to work, is available for work, and is seeking work. A claimant is not considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if the failure is because of:

(i) an illness or disability that occurs after the claimant has ~~registered for work~~ filed or reopened a claim for unemployment insurance benefits and suitable work has not been offered to the claimant after the beginning of the illness or disability; or

(ii) enrollment as a student as provided in 39-51-2307.

(c) prior to the first week for which the individual is paid benefits, has been totally unemployed for a waiting period of 1 week. A week is not counted as a week of total unemployment for the purposes of this subsection:

(i) if benefits have been paid for that week;

(ii) unless the individual was eligible for benefits during the week;

(iii) unless it occurs within the benefit year of the claimant;

(iv) unless it occurs after benefits first could become payable to any individual under this chapter.

(d) has registered for work with the individual's local job service office unless the individual is excused by department rule from registering for work.

(2) (a) The department shall establish a profiling system to identify individuals who are likely to exhaust their regular benefits and who are in need of reemployment services.

(b) In addition to the requirements listed in subsection (1), an individual identified pursuant to subsection (2)(a) may be required to participate in reemployment services in order to be eligible for unemployment benefits.

(c) The requirement for participation in reemployment services may be waived if the department determines that:

(i) the individual has completed reemployment services; or

(ii) the individual's failure to participate in reemployment services is justifiable."

Section 14. Section 39-51-2402, MCA, is amended to read:

"39-51-2402. Initial determination -- redetermination. (1) A representative designated by the department and referred to as a deputy shall promptly examine ~~the~~ a claim for benefits, and~~,~~ on the basis of the deputy's findings of fact ~~facts the deputy has found~~, the deputy shall determine whether or not the claim is valid. If the claim is valid, the deputy ~~will~~ shall determine the week the benefits commence, the weekly benefit amount payable, and the maximum benefit amount. The deputy may refer the claim or any question involved in the claim to an appeals referee who shall make the decision on the claim in accordance with the procedure prescribed in 39-51-2403. ~~With respect to a determination, redetermination, or appeal by a claimant involving wages, the issue must be resolved in accordance with procedures for unemployment insurance benefit claimant appeals, as prescribed in 15-2-302 and 15-30-257 during the time that the department delegated the duties associated with the administration of unemployment insurance contributions to the department of revenue pursuant to 39-51-301.~~ The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons for reaching the decision.

(2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant and other interested parties of the amended decision and the reasons for the decision.

~~(3) A determination or redetermination of an initial or additional claim may not be made under this section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is mailed to~~

~~each interested party.~~

~~(4)~~(3) A determination or redetermination is final unless an interested party entitled to notice of the decision applies for reconsideration of the determination or appeals the decision within 10 days after the notification was mailed to the interested party's last-known address. The 10-day period may be extended for good cause.

~~(5)~~(4) Except as provided in subsection ~~(6)~~ (5), a redetermination of a claim for benefits may not be made after 2 years from the date of the initial determination.

~~(6)~~(5) A redetermination may be made within 3 years from the date of the initial determination of a claim if the initial determination was based on a false claim, misrepresentation, or failure to disclose a material fact by the claimant or the employer."

COORDINATION SECTION. **SECTION 15. COORDINATION INSTRUCTION.** IF BOTH HOUSE BILL NO. 760 AND [THIS ACT] ARE PASSED AND APPROVED, THEN [SECTION 118] OF HOUSE BILL NO. 760, AMENDING 39-51-1301, IS VOID.

NEW SECTION. **Section 16. Effective dates.** (1) [Sections 1 through 8, sections 10 through ~~14~~ 15, and this section] are effective on passage and approval.

(2) [Section 9] is effective January 1, 2006.

- END -

AN ACT GENERALLY REVISING UNEMPLOYMENT INSURANCE LAWS; EXCLUDING SUBSIDIES RECEIVED PURSUANT TO THE ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE FOR OLDER WORKERS PROGRAM FROM THE DEFINITION OF "WAGES"; CLARIFYING ALIEN SERVICES AND DESCRIBING ELECTION JUDGE SERVICES THAT ARE EXCLUDED FROM THE DEFINITION OF "EMPLOYMENT"; REVISING LAWS RELATING TO THE TRANSFER OF UNEMPLOYMENT INSURANCE CONTRIBUTION FUNCTIONS FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF LABOR AND INDUSTRY; SPECIFYING PROGRAMS TO BE SUPPORTED BY MONEY FROM THE EMPLOYMENT SECURITY ACCOUNT; REVISING THE TIME PERIOD FOR CONTESTING CLASSIFICATION AND CONTRIBUTION RATES; REVISING RATE SCHEDULES; REVISING PROCEDURES FOR THE TRANSFER OF EXPERIENCE RATINGS FROM A PREDECESSOR TO A SUCCESSOR EMPLOYER AND PROVIDING PENALTIES FOR WRONGFULLY OBTAINING A LOWER EXPERIENCE RATING; ESTABLISHING PENALTY AND INTEREST ASSESSMENTS FOR LATE FILINGS AND FAILURE TO RESPOND TO DEPARTMENT SUBPOENAS; REVISING PROCEDURES FOR ELIGIBILITY AND FOR FILING UNEMPLOYMENT INSURANCE BENEFIT CLAIMS; AMENDING SECTIONS 39-51-201, 39-51-204, 39-51-301, 39-51-302, 39-51-409, 39-51-1110, 39-51-1206, 39-51-1218, 39-51-1219, 39-51-1301, 39-51-1303, 39-51-2102, 39-51-2104, AND 39-51-2402, MCA; AND PROVIDING EFFECTIVE DATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of

39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the base period means the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which the individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(10) "Employing unit" means any individual or organization, ~~(~~including the state government and any of its political subdivisions or instrumentalities or an Indian tribe or tribal unit~~)~~, partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person that has or had in its employ one or more individuals performing services for it within this state, except as provided under 39-51-204(1)(a) and (1)(q). All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes

of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(11) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to be paid and from which all benefits provided under this chapter must be paid.

(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanton disregard of and for the rights, ~~or~~ title, or interest of a fellow employee or the employer.

(14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

(15) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under a contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e).

(17) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or

postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) ~~Notwithstanding subsection (17)(a), all~~ All universities in this state are institutions of higher education for purposes of this part.

(18) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

(19) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

(20) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(21) "Tribal unit" means an Indian tribe and any tribal subdivision~~,~~ or subsidiary~~,~~ or any business enterprise that is wholly owned by that tribe.

(22) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

(23) (a) "Wages", unless specifically exempted under subsection (23)(b), means all remuneration payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules; ~~or~~

(iii) a no-additional-cost service; or

(iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers program, 19 U.S.C. 2318.

(24) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(25) An individual's "weekly benefit amount" means the amount of benefits that the individual would be entitled to receive for 1 week of total unemployment."

Section 2. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" ~~is~~ means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

(e) service performed by a cosmetologist or barber who is licensed under Title 37, chapter 31, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a salon or shop, as defined in 37-31-101, and the contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the salon or shop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership, members of a member-managed limited liability company that has filed with the secretary of state, or partners in a limited liability partnership that has filed with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed as a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

(n) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded

from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in 5 U.S.C. 8501(1)(I) and section 3306(c)(6) of the Federal Unemployment Tax Act;

(s) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(t) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(u) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the

United States;

(w) service performed by an alien ~~admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act~~ as identified in 8 U.S.C. 1101(a)(15)(F), (a)(15)(H)(ii)(a), (a)(15)(J), (a)(15)(M), or (a)(15)(Q);

(x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873;

(y) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian; ~~or~~

(z) service performed by an individual as an official, including a timer, referee, umpire, or judge, at an amateur athletic event; or

(aa) services performed by an election judge appointed pursuant to 13-4-101 if the remuneration received for those services is less than $1,000 in the calendar year.

(2) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act."

Section 3. Section 39-51-301, MCA, is amended to read:

"39-51-301. Administration -- duties and powers of department. (1) It is the duty of the department to administer this chapter and it may adopt, amend, or rescind rules to employ persons, make expenditures, require reports, make investigations, and take action ~~as~~ that it considers necessary or suitable in administering this chapter.

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and must have an official seal, which is judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly inform the governor and the legislature and make recommendations with respect to the change.

(4) The department and the board may issue subpoenas and compel testimony and the production of evidence, including books and records, in regard to any investigation or proceeding under this chapter.

~~(5) The department may delegate to the department of revenue all duties associated with the administration of unemployment insurance contributions and the employment security account. The duties must be carried out in conformity with the requirements of the program budget plan with the United States department of labor. The department of revenue must receive funds from the department for the performance of the delegated duties. The department of revenue has rulemaking authority with respect to any function or duty delegated to the department of revenue pursuant to this section.~~

~~(6) The department may revoke its delegation to the department of revenue at any time.~~

~~(7)~~(5) Employees transferring from the department of revenue to the department as a result of the termination of the delegation of duties ~~in subsection (5)~~ associated with unemployment insurance contribution functions are entitled to all rights, including those under 2-15-131, possessed as a state officer or employee before transferring, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy including the State Employee Protection Act. Employees transferring must be considered internal applicants by the department of revenue for recruitment purposes for 1 year from the date of the termination of the delegation of duties ~~in subsection (5)~~ associated with unemployment insurance contribution functions.

~~(8)~~(6) The department shall succeed the department of revenue in its rights to property relating to the termination of the delegation of duties ~~in subsection (5)~~ associated with unemployment insurance contribution functions to the extent that is consistent with federal property transfer policy. The property includes real property, records, office equipment, forms, supplies, and contracts other than the program budget plan with the United States department of labor.

~~(9)~~(7) (a) The termination of the delegation of duties ~~in subsection (5)~~ associated with unemployment insurance contribution functions does not affect the validity of any pending judicial or administrative proceeding.

(b) All appeals that have not been heard prior to the termination of the delegation of duties ~~in subsection (5)~~ associated with unemployment insurance contribution functions must be made in accordance with the procedures identified in 39-51-1109.

(c) The department must be substituted for the department of revenue and succeed to all audits, determinations, and other actions following the date of the termination of the delegation of duties ~~in subsection~~

~~(5)~~ associated with unemployment insurance contribution functions.

~~(10)~~(8) The rights, privileges, and duties of the holders of bonds and other obligations issued and of the parties to contracts, leases, indentures, and other transactions entered into before the termination of the delegation of duties ~~in subsection (5)~~ associated with unemployment insurance contribution functions remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by reason of the delegation of duties. The department is substituted for the department of revenue and~~, subject to the provisions of subsection (5),~~ succeeds to the rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions. The provisions of this subsection ~~(10)~~ do not apply to the program budget plan agreement between the department and the United States department of labor."

Section 4. Section 39-51-302, MCA, is amended to read:

"39-51-302. Administrative rules. ~~(1)~~ The department may adopt procedural and substantive rules necessary to implement this chapter.

~~(2) The department shall delegate rulemaking authority to the department of revenue with respect to any function or duty delegated to the department of revenue pursuant to 39-51-301(5).~~"

Section 5. Section 39-51-409, MCA, is amended to read:

"39-51-409. Employment security account. (1) There is an account created in the state special revenue fund called the employment security account.

(2) Money deposited in the employment security account may be appropriated to the department for payment of:

(a) unemployment insurance benefits;

(b) expenses incurred in collecting money deposited in the account;

(c) expenses incurred for the employment offices established in 39-51-307, including expenses for providing services to the business community;

(d) expenses incurred for the apprenticeship and training program;

(e) expenses for displaced homemaker programs provided for under 39-7-305;

(f) expenses for department research and analysis functions that provide employment, wage, and economic data; and

(g) expenses for department functions pertaining to wage and hour laws, prevailing wages, and collective

bargaining.

~~(2)~~(3) The department may transfer funds from the employment security account to the unemployment insurance fund account provided for in 39-51-402 upon receiving approval from the budget director that the transfer will not decrease the money in the account below the level appropriated by the legislature to provide for the employment services programs identified in subsection (2).

~~(3)~~(4) The department may transfer appropriation authority in employment services programs between the federal special revenue and the state special revenue fund types."

Section 6. Section 39-51-1110, MCA, is amended to read:

"39-51-1110. Refunds to employers. (1) If an employer claims an adjustment or the department ~~or its delegate, as provided in 39-51-301,~~ determines through an examination of the employer's account that the employer has overpaid the amount due, the amount of the overpayment must be applied to future unemployment insurance obligations or must be refunded to the employer. The credit or refund may be allowed only if the claim is filed, or the determination is made, within a 5-year period after the date on which any taxes, penalty, or interest became due or within ~~one~~ 1 year from the date the payment is made, whichever is later. The department ~~or its delegate pursuant to 39-51-301(5),~~ shall credit or refund the amount to the employer, without interest.

(2) If the department ~~or its delegate pursuant to 39-51-301(5),~~ determines that an employer has paid taxes to this state under this chapter but the taxes should have been paid to another state under a similar act of the other state, a transfer of the taxes to the other state must be made upon discovery or, upon proof of payment that the other state has been fully paid, then a refund to the employer must be made upon application without limitation of time.

(3) If this chapter is not certified by the secretary of labor under 26 U.S.C. 3304 for any year, then refunds must be made of all taxes required under this chapter from employers for that year."

Section 7. Section 39-51-1206, MCA, is amended to read:

"39-51-1206. Department to provide for notification of employers of their classification and contribution rate. (1) The department shall by ~~regulation~~ rule provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. Except as provided in subsection (2), the notification is final for all purposes unless ~~and until~~ the employer files a written request with the department for a redetermination or hearing on the classification and rate of contribution within 30 days after ~~receipt~~ the

mailing date of the notice. The department may extend the 30-day period for good cause.

(2) The department may make changes in classification and rate of contribution upon an oral request for redetermination from the employer if the department finds that the department has made an error."

Section 8. Section 39-51-1218, MCA, is amended to read:

"39-51-1218. Rate schedules.

SCHEDULES OF CONTRIBUTION RATES - Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
Minimum Ratio of Fund to Total Wages	(.0245)	(.0225)	(.0200)	(.0170)
Average Tax Rate	1.37	1.57	1.77	1.97
Rate Class	Contribution Rates for Eligible Employers			
1	0.00%	0.07%	0.27%	0.47%
2	0.07	0.27	0.47	0.67
3	0.27	0.47	0.67	0.87
4	0.47	0.67	0.87	1.07
5	0.67	0.87	1.07	1.27
6	0.87	1.07	1.27	1.47
7	1.07	1.27	1.47	1.67
8	1.27	1.47	1.67	1.87
9	1.47	1.67	1.87	2.07
10	1.67	1.87	2.07	2.27
Rate Class	Contribution Rates for Deficit Employers			
1	3.17%	3.37%	3.57%	3.77%
2	3.37	3.57	3.77	3.97
3	3.57	3.77	3.97	4.17
4	3.77	3.97	4.17	4.37
5	3.97	4.17	4.37	4.57
6	4.17	4.37	4.57	4.77
7	4.37	4.57	4.77	4.97

8			4.57	4.77	4.97	5.17
9			4.77	4.97	5.17	5.37
10			6.37	6.37	6.37	6.37

SCHEDULES OF CONTRIBUTION RATES - Part II

Sched. V (.0135)	Sched. VI (.0095)	Sched. VII ~~(.00575)~~ (.0075)	Sched. VIII (.0050)	Sched. IX (....)	Sched. X (....)
2.17	2.37	2.57	2.77	2.97	3.17
Contribution Rates for Eligible Employers					
0.67%	0.87%	1.07%	1.27%	1.47%	1.67%
0.87	1.07	1.27	1.47	1.67	1.87
1.07	1.27	1.47	1.67	1.87	2.07
1.27	1.47	1.67	1.87	2.07	2.27
1.47	1.67	1.87	2.07	2.27	2.47
1.67	1.87	2.07	2.27	2.47	2.67
1.87	2.07	2.27	2.47	2.67	2.87
2.07	2.27	2.47	2.67	2.87	3.07
2.27	2.47	2.67	2.87	3.07	3.27
2.47	2.67	2.87	3.07	3.27	3.47
Contribution Rates for Deficit Employers					
3.97%	4.17%	4.37%	4.57%	4.77%	4.97%
4.17	4.37	4.57	4.77	4.97	5.17
4.37	4.57	4.77	4.97	5.17	5.37
4.57	4.77	4.97	5.17	5.37	5.57
4.77	4.97	5.17	5.37	5.57	5.77
4.97	5.17	5.37	5.57	5.77	5.97
5.17	5.37	5.57	5.77	5.97	6.17
5.37	5.57	5.77	5.97	6.17	6.37
5.57	5.77	5.97	6.17	6.37	6.37

6.37 6.37 6.37 6.37 6.37 6.37"

Section 9. Section 39-51-1219, MCA, is amended to read:

"39-51-1219. Procedures for ~~the~~ substitution, merger, transfer, or acquisition of ~~an~~ employer account by ~~a~~ successor employing unit -- prohibitions and penalties -- definitions. (1) (a) ~~Subject to the provisions of subsection (3), whenever any individual or organization (whether or not a covered employer)~~ If an employer in any manner succeeds to or acquires all or ~~substantially all~~ a portion of the trade or business of ~~an~~ another employer or transfers all or a portion of the employer's trade or business to another employer and both employers are under substantially common ownership, management, or control at the time of the succession, acquisition, or transfer, the experience rating record attributable to the predecessor employer must be transferred to and combined with the experience rating record of the successor employer. ~~who at the time of acquisition was a covered employer and whenever in respect to whom the department finds that the business of the predecessor is continued solely by the successor:~~

~~(a)~~ (b) ~~the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor must, upon the joint application of the predecessor and the successor within 90 days after the acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and~~ In the case of a partial transfer of a trade or business, the portion of the experience rating record transferred from the predecessor employer to the successor employer must be based on the portion of the trade or business transferred. The portion must be determined in the same ratio as the payroll transferred to the successor employer in the 4 reported calendar quarters immediately preceding the date of the transfer.

(c) Whenever a transfer involves only a portion of the experience rating record and the predecessor employer or successor employer fails to supply the required payroll information to the department within 10 days after notification, the transfer must be based on estimates of the applicable payrolls.

~~(b)~~(d) ~~any~~ Any successor employer who was not an employer on the date of acquisition becomes a covered employer as of that date.

(e) A successor employer must be notified by the department in writing of the transfer of the experience rating record, and unless the successor employer appeals the transfer within 30 days of the date on which the notice was mailed, the successor employer's right to appeal the transfer is waived.

(2) (a) ~~Whenever any individual or organization (whether or not a covered employer) in any manner~~ If

an employer transfers, succeeds to, or acquires all or a portion ~~part~~ of the trade or business of ~~an~~ a covered employer ~~who at the time of acquisition was a covered employer and whenever that~~ and the employers are not under substantially common ownership, management, or control, the predecessor employer and the successor employer have the option to transfer the applicable portion of the experience rating record from the predecessor employer to the successor employer if that portion of the trade or business is continued by the successor employer.~~:~~

~~(a)~~ (b) ~~so much of the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor as is attributable to the portion of the business transferred, as determined on a pro rata basis in the same ratio that the wages of covered employees properly allocable to the transferred portion of the business bear to the payroll of the predecessor in the last 4 completed calendar quarters immediately preceding the date of transfer, must, upon the~~ In order to make the transfer, a joint application for the transfer of the experience rating record must be made by ~~of~~ the predecessor employer and the successor employer within 90 days ~~after~~ of the acquisition and approval by the department.~~, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and~~

(c) In the case of a complete transfer of the trade or business, all of the experience rating record of the predecessor employer is transferred to the successor employer.

(d) In the case of a partial transfer of the trade or business, the portion of the experience rating record transferred from the predecessor employer to the successor employer must be based on the portion of the trade or business transferred. This portion must be determined in the same ratio as the payroll transferred to the successor employer in the 4 reported calendar quarters immediately preceding the date of transfer.

~~(b)~~(e) ~~any~~ A successor employer who was not an employer on the date of acquisition becomes a covered employer as of that date.

~~(3) (a)~~ (f) The 90-day period for filing the joint application may be extended at the discretion of the department.

~~(b) Whenever a predecessor covered employer has a deficit experience rating account as of the last computation date, the transfer provided for in subsections (1) and (2) is mandatory except when it is shown by substantial evidence that the management, the ownership, or both the management and ownership are not substantially the same for the successor as for the predecessor, in which case the successor shall begin with the rate of a new employer. Whenever a mandatory transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after~~

~~notice, the transfer must be based on estimates of the applicable payrolls. The successor must be notified in writing of the mandatory transfer, and unless the mandatory transfer is appealed within 30 calendar days, the right to appeal is waived.~~

~~(c) Whenever a predecessor covered employer has an eligible experience rating account as of the last computation date and when it is shown by substantial evidence that the management, the ownership, or both the management and the ownership are substantially the same for the successor as for the predecessor, the transfer provided for in subsections (1) and (2) is automatic. Whenever an automatic transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notification, the transfer must be based on estimates of the applicable payrolls. The successor must be notified in writing of the automatic transfer and shall request within 30 days of notification that the experience rating account of the predecessor not be transferred.~~

~~(4)~~(3) (a) If the successor employer was a covered employer prior to the date of the acquisition of all or a ~~part~~ portion of the ~~predecessor's~~ predecessor employer's trade or business and if:

(i) the employers are not under substantially common ownership, management, or control at the time of acquisition, the ~~successor's~~ successor employer's rate of contribution, effective the first day of the calendar year immediately following the date of acquisition, is based on the combined experience of the predecessor employer and successor employer; or

(ii) the employers were under substantially common ownership, management, or control at the time of acquisition, the successor employer's experience rate must be combined with the predecessor employer's experience rate and must be recalculated and become effective at the beginning of the calendar quarter in which the acquisition occurred.

(b) If the successor employer was not a covered employer prior to the date of the acquisition of all or a ~~part~~ portion of the ~~predecessor's~~ predecessor employer's trade or business and the employers are not under substantially common ownership, management, or control, upon joint application by the employers, the ~~successor's~~ successor employer's rate is the rate ~~applicable~~ assigned to the predecessor employer ~~with respect to the period immediately preceding~~ as of the date of acquisition~~, but if~~. If there was more than one predecessor employer, the ~~successor's~~ successor employer's rate must be ~~a newly~~ computed ~~rate~~ based on the combined experience of the ~~predecessors~~ predecessor employers and becomes~~, becoming~~ effective immediately after the date of acquisition and ~~remaining~~ remains in effect for the balance of the rate year.

(4) The transfer of all or part of an employer's workforce to another employer must be considered a

transfer of a trade or business if, as a result of the workforce transfer, the transferring employer is not any longer performing the trade or business with respect to the transferred workforce and the trade or business is performed by the employer to which the workforce is transferred.

(5) (a) The experience rating record of a predecessor trade or business may not be transferred to a person acquiring the trade or business if:

(i) the person is not otherwise an employer at the time of the acquisition; and

(ii) the department finds that the person acquired the trade or business solely or primarily for the purpose of obtaining a lower rate of contributions.

(b) A person subject to the provisions of subsection (5)(a) must be assigned the applicable new employer rate pursuant to 39-51-1217.

(6) Factors that the department may consider in determining if a person acquired a trade or business solely or primarily for the purpose of obtaining a lower rate of contributions include but are not limited to:

(a) the cost of acquisition;

(b) whether the person continued the trade or business operation;

(c) the length of time that the trade or business operation was continued after acquisition; and

(d) whether a substantial number of new employees were to perform duties unrelated to the trade or business operations conducted prior to the acquisition.

(7) A person who knowingly violates, attempts to violate, or provides advice on violating the provisions of this section is subject to the following penalties:

(a) If the person is an employer, the employer shall be assessed a penalty equal to 6% of the employer's average annual taxable wages used in computing the employer's most recent year's experience rating record. The penalty must be deposited in the penalty and interest account established in 39-51-1301(4).

(b) If the person is not an employer, the person is subject to a civil penalty of not more than $5,000. The penalty must be deposited in the penalty and interest account established in 39-51-1301(4).

(c) In addition to the penalties provided for in subsections (7)(a) and (7)(b), a person who violates a provision of this section:

(i) is subject to any other penalties prescribed by this chapter;

(ii) may be subject to a criminal penalty pursuant to 39-51-3204; and

(iii) may be charged with any other applicable criminal violations provided by law.

(8) For the purposes of this section, the following definitions apply:

(a) "Knowingly" means having actual knowledge of, acting with deliberate ignorance of, or reckless disregard for the prohibitions established in this section.

(b) "Person" includes an individual, trust, estate, partnership, association, company, or corporation.

(c) "Trade or business" includes an employer's workforce.

(9) The department shall establish procedures to identify the transfer or acquisition of a trade or business for the purposes of this section.

(10) This section must be interpreted and applied in a manner that meets the minimum requirements contained in any guidance or regulations issued by the United States department of labor."

Section 10. Section 39-51-1301, MCA, is amended to read:

"39-51-1301. Penalty and interest on past-due reports and taxes. (1) Failure to file reports and payments in a timely manner, as required under 39-51-603, 39-51-1103, and 39-51-1125, may subject an employer to penalty and interest, as provided ~~by 15-30-209~~ in subsection (2).

(2) The department may assess penalties and interest under this section as follows:

(a) a penalty of $25 for the failure to file reports or make payments in a timely manner;

(b) in addition to the late penalty provided in subsection (2)(a), a penalty of $50 if the department issues a subpoena or makes a summary or jeopardy assessment, as provided in 39-51-1302, as the result of an employer's refusal or failure to provide requested information;

(c) in addition to the penalties in subsections (2)(a) and (2)(b), a penalty of $100 for failure to comply with a subpoena; and

(d) interest at the rate of 1.5% a month on any amounts owed to the department under this subsection (2) that are not paid in a timely manner.

(3) The department may waive all or any portion of any penalties and interest assessed pursuant to subsection (2).

~~(2)~~(4) There is an account in the federal special revenue fund. Penalties and interest collected for unemployment insurance obligations must be deposited in that account. Money deposited in that account and appropriated to the department ~~or transferred by the department to its delegate, pursuant to 39-51-301(5),~~ may ~~only~~ be used by the department ~~or its delegate~~ only to administer this chapter, including the detection and collection of unpaid taxes and overpayments of benefits to the extent that federal grant revenue is less than amounts appropriated for this purpose. Money in the account not appropriated for these purposes must be

transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

~~(3)~~(5) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due unemployment insurance taxes must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose."

Section 11. Section 39-51-1303, MCA, is amended to read:

"39-51-1303. Collection of unpaid taxes. (1) The department~~, or its delegate pursuant to 39-51-301(5), has authority to~~ may enter into payment agreements with an employer to resolve unpaid taxes, penalty, and interest. Penalty or interest, or both penalty and interest, may be abated if an acceptable payment agreement is entered into and ~~adhered to~~ followed. Failure to meet the terms of the payment agreement voids the penalty and interest abatement, and the penalty and interest must be recomputed from the due date of the unpaid tax.

(2) If, after due notice, any employer, liable corporate officer, liable member or manager of a limited liability company referred to in 39-51-1105, or partner in a limited liability partnership defaults in any payment of taxes, penalties, or interest on the taxes and penalties, the department~~, or its delegate pursuant to 39-51-301(5),~~ may initiate a civil action in the name of the state to collect the amount due, and the employer, liable corporate officer, liable member or manager of a limited liability company ~~referred to in 39-51-1105~~, or partner in a limited liability partnership adjudged in default shall pay the costs of the action.

(3) An action for the collection of taxes due must be brought within 5 years from the date the original or amended report was filed or the assessment became due, whichever is later, or ~~it~~ the action is barred.

(4) The department~~, or its delegate pursuant to 39-51-301(5),~~ may pursue its remedy under 39-51-1304~~,~~ or this section, or both."

Section 12. Section 39-51-2102, MCA, is amended to read:

"39-51-2102. ~~Week~~ Commencement of week of unemployment -- ~~when deemed to commence.~~ An individual's week of unemployment ~~shall be deemed to commence~~ commences only after ~~his registration at an unemployment office~~ the individual files a claim for unemployment insurance benefits with the unemployment insurance division and has registered for work with the individual's local job service, except as the department may by ~~regulation~~ rule otherwise prescribe."

Section 13. Section 39-51-2104, MCA, is amended to read:

"39-51-2104. General benefit eligibility conditions. (1) An unemployed individual is eligible to receive benefits for any week of total unemployment within the individual's benefit year only if the department finds that the individual:

(a) has filed a claim ~~at~~ and has ~~continued to report at an employment office~~ filed continued claims in accordance with rules that the department may prescribe~~, except that the department may by rule prescribe that in cases in which it finds the requirements oppressive or inconsistent with the purposes of this chapter, an unemployed individual may file a claim and report for work by mail or through other governmental agencies~~;

(b) is able to work, is available for work, and is seeking work. A claimant is not considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if the failure is because of:

(i) an illness or disability that occurs after the claimant has ~~registered for work~~ filed or reopened a claim for unemployment insurance benefits and suitable work has not been offered to the claimant after the beginning of the illness or disability; or

(ii) enrollment as a student as provided in 39-51-2307.

(c) prior to the first week for which the individual is paid benefits, has been totally unemployed for a waiting period of 1 week. A week is not counted as a week of total unemployment for the purposes of this subsection:

(i) if benefits have been paid for that week;

(ii) unless the individual was eligible for benefits during the week;

(iii) unless it occurs within the benefit year of the claimant;

(iv) unless it occurs after benefits first could become payable to any individual under this chapter.

(d) has registered for work with the individual's local job service office unless the individual is excused by department rule from registering for work.

(2) (a) The department shall establish a profiling system to identify individuals who are likely to exhaust their regular benefits and who are in need of reemployment services.

(b) In addition to the requirements listed in subsection (1), an individual identified pursuant to subsection (2)(a) may be required to participate in reemployment services in order to be eligible for unemployment benefits.

(c) The requirement for participation in reemployment services may be waived if the department determines that:

(i) the individual has completed reemployment services; or

(ii) the individual's failure to participate in reemployment services is justifiable."

Section 14. Section 39-51-2402, MCA, is amended to read:

"39-51-2402. Initial determination -- redetermination. (1) A representative designated by the department and referred to as a deputy shall promptly examine ~~the~~ a claim for benefits, and~~,~~ on the basis of the deputy's findings of fact ~~facts the deputy has found~~, the deputy shall determine whether or not the claim is valid. If the claim is valid, the deputy ~~will~~ shall determine the week the benefits commence, the weekly benefit amount payable, and the maximum benefit amount. The deputy may refer the claim or any question involved in the claim to an appeals referee who shall make the decision on the claim in accordance with the procedure prescribed in 39-51-2403. ~~With respect to a determination, redetermination, or appeal by a claimant involving wages, the issue must be resolved in accordance with procedures for unemployment insurance benefit claimant appeals, as prescribed in 15-2-302 and 15-30-257 during the time that the department delegated the duties associated with the administration of unemployment insurance contributions to the department of revenue pursuant to 39-51-301.~~ The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons for reaching the decision.

(2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant and other interested parties of the amended decision and the reasons for the decision.

~~(3) A determination or redetermination of an initial or additional claim may not be made under this section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party.~~

~~(4)~~(3) A determination or redetermination is final unless an interested party entitled to notice of the decision applies for reconsideration of the determination or appeals the decision within 10 days after the notification was mailed to the interested party's last-known address. The 10-day period may be extended for good cause.

~~(5)~~(4) Except as provided in subsection ~~(6)~~ (5), a redetermination of a claim for benefits may not be made after 2 years from the date of the initial determination.

~~(6)~~(5) A redetermination may be made within 3 years from the date of the initial determination of a claim if the initial determination was based on a false claim, misrepresentation, or failure to disclose a material fact by the claimant or the employer."

Section 15. Coordination instruction. If both House Bill No. 760 and [this act] are passed and approved, then [section 118] of House Bill No. 760, amending 39-51-1301, is void.

Section 16. Effective dates. (1) [Sections 1 through 8, sections 10 through 15, and this section] are effective on passage and approval.

(2) [Section 9] is effective January 1, 2006.

- END -

I hereby certify that the within bill,
HB 0159, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2019.

President of the Senate

Signed this _____ day
of _____, 2019.

HOUSE BILL NO. 159

INTRODUCED BY MCKENNEY

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

AN ACT GENERALLY REVISING UNEMPLOYMENT INSURANCE LAWS; EXCLUDING SUBSIDIES RECEIVED PURSUANT TO THE ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE FOR OLDER WORKERS PROGRAM FROM THE DEFINITION OF "WAGES"; CLARIFYING ALIEN SERVICES AND DESCRIBING ELECTION JUDGE SERVICES THAT ARE EXCLUDED FROM THE DEFINITION OF "EMPLOYMENT"; REVISING LAWS RELATING TO THE TRANSFER OF UNEMPLOYMENT INSURANCE CONTRIBUTION FUNCTIONS FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF LABOR AND INDUSTRY; SPECIFYING PROGRAMS TO BE SUPPORTED BY MONEY FROM THE EMPLOYMENT SECURITY ACCOUNT; REVISING THE TIME PERIOD FOR CONTESTING CLASSIFICATION AND CONTRIBUTION RATES; REVISING RATE SCHEDULES; REVISING PROCEDURES FOR THE TRANSFER OF EXPERIENCE RATINGS FROM A PREDECESSOR TO A SUCCESSOR EMPLOYER AND PROVIDING PENALTIES FOR WRONGFULLY OBTAINING A LOWER EXPERIENCE RATING; ESTABLISHING PENALTY AND INTEREST ASSESSMENTS FOR LATE FILINGS AND FAILURE TO RESPOND TO DEPARTMENT SUBPOENAS; REVISING PROCEDURES FOR ELIGIBILITY AND FOR FILING UNEMPLOYMENT INSURANCE BENEFIT CLAIMS; AMENDING SECTIONS 39-51-201, 39-51-204, 39-51-301, 39-51-302, 39-51-409, 39-51-1110, 39-51-1206, 39-51-1218, 39-51-1219, 39-51-1301, 39-51-1303, 39-51-2102, 39-51-2104, AND 39-51-2402, MCA; AND PROVIDING EFFECTIVE DATES.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JIM KEANE**, on January 18, 2005 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:
Rep. Jim Keane, Chairman (D)
Rep. Joe McKenney, Vice Chairman (R)
Rep. Elsie Arntzen (R)
Rep. Bob Bergren (D)
Rep. Tim Dowell (D)
Rep. Kevin T. Furey (D)
Rep. Dave Gallik (D)
Rep. Ralph Heinert (R)
Rep. Llew Jones (R)
Rep. Mike Jopek (D)
Rep. Harry Klock (R)
Rep. Scott Mendenhall (R)
Rep. Mike Milburn (R)
Rep. Don Roberts (R)
Rep. Wayne Stahl (R)
Rep. Dan Villa (D)
Rep. Jonathan Windy Boy (D)

Members Excused: Rep. Kathleen Galvin-Halcro, Vice Chairman (D)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:
Hearing & Date Posted: HB 188, 1/11/2005; HB 179, 1/11/2005; HB 160, 1/11/2005; HB 159, 1/11/2005
Executive Action: HB 202, HB 159, HB 161

HEARING ON HB 188

Opening Statement by Sponsor: REP. BOB BERGREN (D), HD 33, opened the hearing on **HB 188,** Generally revise insurance laws.
00:02:46

Proponents' Testimony:
00:05:44 Alisha Pichette, State Auditor's Office
EXHIBIT(buh13a01)
00:10:35 Karen Powell, State Auditor's Office
00:11:41 Larry Kibbee, Property Casualty Insurance
00:12:45 Candace Payne, Montana Rental Car Association
00:13:12 Riley Johnson, Enterprise Rent-A-Car
00:13:29 Roger McGlenn, Independant Insurance Agents
00:13:48 Mona Jamison, Montana Life and Health Insurance
00:14:26 Frank Cote, American Health Insurance Providers
00:14:47 Greg Van Horrsen, State Farm
00:14:54 Keith Colbo, New West Insurance

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:
00:15:34

HEARING ON HB 179

Opening Statement by Sponsor: REP. BOB LAKE (R), HD 88, opened the hearing on **HB 179,** Revise 1-stop licensing program & clarify initial requirement for business name.
00:16:19

Proponents' Testimony:
00:18:34 Mark Simonich, Secretary of State

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
00:22:30

Closing by Sponsor:
00:33:34

HEARING ON HB 160

Opening Statement by Sponsor: **REP. HAL JACOBSON (D), HD 82,** opened the hearing on **HB 160,** Revise building code administration, enforcement provisions.
00:35:11

Proponents' Testimony:
00:38:14 Jim Brown, Department of Labor and Industry
00:46:33 Jack Campbell, Jack's Technical Assistance

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
00:47:49

Closing by Sponsor:
00:54:25

HEARING ON HB 159

Opening Statement by Sponsor: **REP. JOE MCKENNEY (R), HD 18,** opened the hearing on **HB 159,** Revise unemployment insurance laws.
00:57:37

Proponents' Testimony:
00:59:33 Keith Kelly, Department of Labor and Industry

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
01:06:46

Closing by Sponsor:
01:14:09

EXECUTIVE ACTION ON HB 202

Motion: REP. MCKENNEY moved that HB 202 DO PASS.

Discussion:
01:32:09

Substitute Motion/Vote: REP. VILLA made a substitute motion that HB 202 BE TABLED. Substitute motion carried unanimously.

EXECUTIVE ACTION ON HB 159

Motion/Vote: REP. MCKENNEY moved that HB 159 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON HB 89

Motion: REP. KLOCK moved that HB 89 DO PASS.

Discussion:
01:36:59

Motion: REP. KLOCK moved that HB 89 BE withdrawn without objection.

EXECUTIVE ACTION ON HB 161

Motion: REP. MENDENHALL moved that HB 161 DO PASS.

Discussion:
01:40:28
EXHIBIT(buh13a02)

Substitute Motion: REP. MENDENHALL made a substitute motion that HB 161 BE AMENDED.

Discussion:
01:41:18

Vote: Motion carried unanimously.

Motion/Vote: REP. MENDENHALL moved that HB 161 DO PASS AS AMENDED. Motion carried unanimously.

ADJOURNMENT

Adjournment: 9:45 A.M.

_____
REP. JIM KEANE, Chairman

_____
KYANNE KELLY, Secretary

JK/KK

Additional Exhibits:

EXHIBIT(buh13aad0.PDF)

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE 1-18-05

NAME	PRESENT	ABSENT	EXCUSED
REP. JIM KEANE, CHAIR.	✓		
REP. KATHLEEN GALVIN-HALCRO, VICE CHAIR			✓
REP. JOE McKENNEY, VICE CHAIR	✓		
REP. ELSIE ARNTZEN	✓		
REP. BOB BERGREN	✓		
REP. TIM DOWELL	✓		
REP. KEVIN FUREY	✓		
REP. DAVE GALLIK	✓		
REP. RALPH HEINERT	✓		
REP. LLEW JONES	✓		
REP. MIKE JOPEK	✓		
REP. HARRY KLOCK	✓		
REP. SCOTT MENDENHALL	✓		
REP. MIKE MILBURN	✓		
REP. DON ROBERTS	✓		
REP. WAYNE STAHL	✓		
REP. DAN VILLA	✓		
REP. JONATHAN WINDY BOY	✓		

COMMITTEE FILE COPY

TABLED BILL

The **HOUSE BUSINESS AND LABOR COMMITTEE** TABLED **HB 202**, by motion, on **Tuesday, January 18, 2005**.

Kyanne Kelly
(For the Committee)

jbw
(Chief Clerk of the House)

10:30 , 1/18
(Time) (Date)

January 18, 2005 Kyanne Kelly, Secretary Phone: 1512

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 159** (first reading copy -- white) **do pass.**

Signed: _____
Representative Jim Keane, Chair

- END -

Committee Vote:
Yes 18, No 0.

131025SC.hkh
1/18/05
jpm

HOUSE STANDING COMMITTEE REPORT

January 18, 2005

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 161** (first reading copy -- white) **do pass as amended.**

Signed: _____
Representative Jim Keane, Chair

And, that such amendments read:

1. Page 10, line 30.
Strike: "compensation"
Insert: "benefits"

2. Page 11, line 10.
Following: "deposits"
Strike: "into cash and"
Following: "to pay"
Strike: "the" through "upon"

- END -

Committee Vote:
Yes 18, No 0.

131027SC.hkh
1/18/05

VISITORS REGISTER

Montana
House of Representatives
Business & Labor Committee

Bill Number: HB188 Date: 1-18-05

Please print ~ Please print ~ Please print ~ Please print

Name	Representing	Support	Oppose	Informational
Mona Jamiscin	Mt Life + Health Guar Assoc	✓		
Keith Colbo	NEW WEST	✓		
Riley Johnson	Enterprise Rent-A-Car	✓	With Amendments	
Jeff Lolly	MT. DEPT. of LABOR	X		
Roger McGlenn	IIAM	X		
Jerry Wikstrom	PCI	X		
Karen Powell	SAO	X		
Carl Page	Mont Car Rental Ass	X	with amendment	
Greg Van Horssen	State Farm	X		
Frank Cote	MMIA	✓		
Jacqueline Lenmark	AIA; ACLI	X		

Please leave prepared testimony with Committee Secretary. Witness Statement forms are available if you care to submit written testimony.

VISITORS REGISTER

Montana
House of Representatives
Business + Labor Committee

Bill Number: HB179 Date: 1-18-05

Please print ~ Please print ~ Please print ~ Please print

Name	Representing	Support	Oppose	Informational
MARK Simonich	SOS	X		

Please leave prepared testimony with Committee Secretary. Witness Statement forms are available if you care to submit written testimony.

VISITORS REGISTER

Montana
House of Representatives
Business Labor Committee

Bill Number: HB159 Date: 1-18-05

Please print ~ Please print ~ Please print ~ Please print

Name	Representing	Support	Oppose	Informational

Please leave prepared testimony with Committee Secretary. Witness Statement forms are available if you care to submit written testimony.

VISITORS REGISTER

Montana
House of Representatives
Business Labor Committee

Bill Number: HB 160 Date: 1-18-09

Please print ~ Please print ~ Please print ~ Please print

Name	Representing	Support	Oppose	Informational
Jim Brown	DLI	✓		
Greg VanHorssen	State Farm Ins. Co	✓		
JIM McGIMSEY	DLI	✓		✓

Please leave prepared testimony with Committee Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS, LABOR, AND ECONOMIC AFFAIRS

Call to Order: By **CHAIRMAN VICKI COCCHIARELLA**, on March 23, 2005 at 9:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:
Sen. Vicki Cocchiarella, Chairman (D)
Sen. Joe Balyeat (R)
Sen. Duane Grimes (R)
Sen. Dave Lewis (R)
Sen. Glenn Roush (D)
Sen. Frank Smith (D)
Sen. Donald J. Steinbeisser (R)
Sen. Bill Tash (R)
Sen. Joseph (Joe) Tropila (D)

Members Excused: Sen. Carolyn Squires (D)
Sen. Jon Tester (D)

Members Absent: None.

Staff Present: Annie Glover, Committee Secretary
Pat Murdo, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:
Hearing & Date Posted: HB 159, 3/18/2005; HB 18, 3/18/2005
Executive Action: HB 159, HB 270, HB 271, HB 179, HB 559, HB 295, HB 257, HB 18, HB 418

00:00:00

HEARING ON HB 159

Opening Statement by Sponsor:

REP. JOE MCKENNEY (R), HD 18, opened the hearing on **HB 159,** Revise unemployment insurance laws.

EXHIBIT(bus64a01)
EXHIBIT(bus64a02)

Proponents' Testimony:

00:01:59 **Mr. Dore Schwinden, Deputy Commissioner, Department of Labor and Industry**
00:05:37 **Ms. Sheila Hogan, Director, Career Training Institute, State Displaced Homemaker Program**

Opponents' Testimony: None.

Informational Testimony:

00:06:55 **Mr. Roy Mulvaney, Department of Labor and Industry**

00:07:20
Questions from Committee Members and Responses:

Ms. Ingrid Childress, Administrator, Workforce Services Division, Department of Labor and Industry
Ms. Sandy Bay, Department of Labor and Industry

00:18:17
Closing by Sponsor:

SEN. TROPILA will carry **HB 159** on the Senate Floor.

00:19:24

EXECUTIVE ACTION ON HB 159

Motion: **SEN. TROPILA moved that HB 159 BE CONCURRED IN.**

Motion: **SEN. TROPILA moved that HB 159 BE AMENDED WITH HB015901.APM AND HB015902.APM.**

Discussion:

Motion/Vote: SEN. TROPILA moved that HB 159 BE CONCURRED IN AS AMENDED. Motion carried unanimously by voice vote. SEN. SQUIRES voted aye by proxy.

00:22:12

EXECUTIVE ACTION ON HB 270

Motion/Vote: SEN. ROUSH moved that HB 270 BE CONCURRED IN. Motion carried unanimously by voice vote. SEN. SQUIRES voted aye by proxy.

00:22:59

EXECUTIVE ACTION ON HB 271

Motion: SEN. ROUSH moved that HB 271 BE CONCURRED IN.

Discussion:

Mr. Andy Poole, Department of Commerce
Mr. Evan Barrett, Governor's Office of Economic Development

Vote: Motion carried unanimously by voice vote. SEN. SQUIRES voted aye by proxy.

00:26:25

EXECUTIVE ACTION ON HB 179

Motion: SEN. GRIMES moved that HB 179 BE CONCURRED IN.

Motion/Vote: SEN. GRIMES moved that HB 179 BE AMENDED WITH HB17901.APM. Motion carried unanimously by voice vote.

Motion: SEN. GRIMES moved that HB 179 BE CONCURRED IN.

Discussion:

Vote: Motion carried unanimously by voice vote. SEN. SQUIRES voted aye by proxy.

00:30:24

EXECUTIVE ACTION ON HB 559

Motion: SEN. LEWIS moved that HB 559 BE CONCURRED IN.

Discussion:

Vote: Motion carried unanimously by voice vote. SEN. SQUIRES voted aye by proxy.

00:31:56

EXECUTIVE ACTION ON HB 295

Motion: SEN. ROUSH moved that HB 295 BE CONCURRED IN.

EXHIBIT(bus64a03)

Motion: SEN. ROUSH moved that HB 295 BE AMENDED WITH HB029501.APM.

Discussion:

Vote: Motion carried unanimously by voice vote.

Motion: SEN. ROUSH moved that HB 295 BE CONCURRED IN AS AMENDED.

Discussion:

Vote: Motion carried unanimously by voice vote. SEN. SQUIRES voted aye by proxy.

00:38:27

DISCUSSION ON HB 732

SEN. ROUSH, SEN. GRIMES and **SEN. COCCHIARELLA** will serve on a Subcommittee.

00:42:52

EXECUTIVE ACTION ON HB 257

Motion: SEN. ROUSH moved that HB 257 BE CONCURRED IN.

Discussion:

Vote: Motion carried unanimously by voice vote. SEN. SQUIRES voted aye by proxy.

EXHIBIT(bus64a04)

00:53:43

Discussion on Study Resolutions

EXHIBIT(bus64a05)

Motion/Vote: SEN. GRIMES moved that THE COMMITTEE DRAFT A STUDY RESOLUTION. Motion carried unanimously by voice vote. SEN. SQUIRES and SEN. TESTER voted aye by proxy.

00:58:57

HEARING ON HB 18

Opening Statement by Sponsor:

REP. CAROL JUNEAU (D), HD 16, opened the hearing on **HB 18,** Extend duration of state-tribal economic development commission.

Proponents' Testimony:

01:01:14 **Mr. Evan Barrett, Governor's Office of Economic Development**
01:06:49 **Mr. Andy Poole, Department of Commerce**

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

01:08:10
Closing by Sponsor:

SEN. SMITH will carry **HB 18** on the Senate Floor.

01:08:59

EXECUTIVE ACTION ON HB 18

Motion/Vote: SEN. SMITH moved that HB 18 BE CONCURRED IN.

Discussion:

Vote: Motion carried unanimously by voice vote. SEN. SQUIRES voted aye by proxy.

01:11:55

EXECUTIVE ACTION ON HB 418

Mr. Tom Schneider, Montana Public Employees Association
Mr. J.C. Weingartner, Montana Education Association-Montana Federation of Teachers (MEA-MFT)
Mr. Randy Morris, Department of Administration

Motion: SEN. LEWIS moved that HB 418 BE CONCURRED IN.

Motion: SEN. LEWIS moved that HB 418 BE AMENDED WITH HB041803.APM.

Discussion:

EXHIBIT(bus64a06)
EXHIBIT(bus64a07)

Substitute Motion: SEN. BALYEAT made a substitute motion that HB 418 BE AMENDED CONCEPTUALLY AND WITH HB041803.APM WHERE PARAGRAPHS 2 AND 3 HAVE BEEN STRICKEN AND WHERE "ON A RECURRING BASIS" HAS BEEN STRICKEN IN PARAGRAPH 1.

Discussion:

Vote: Substitute motion failed 7-1 by voice vote with SEN. BALYEAT voting aye.

Motion/Vote: SEN. COCCHIARELLA moved that HB 418 BE AMENDED CONCEPTUALLY AND WITH HB041803.APM WHERE PARAGRAPHS 2 AND 3 HAVE BEEN STRICKEN. Motion carried 6-3 by voice vote with SEN. BALYEAT, SEN. GRIMES, and SEN. TASH voting no. SEN. SQUIRES and SEN. TESTER voted aye by proxy.

Motion: SEN. GRIMES moved that HB 418 BE CONCURRED IN AS AMENDED.

Discussion:

EXHIBIT(bus64a08)

Vote: Motion carried 6-5 by roll call vote with SEN. BALYEAT, SEN. GRIMES, SEN. LEWIS, SEN. STEINBEISSER, and SEN. TASH voting no. SEN. SQUIRES and SEN. TESTER voted aye by proxy.

02:15:43

DISCUSSION ON HB 295

HB 295 and **HB 418** will be held in committee for reconsideration.

ADJOURNMENT

Adjournment: 11:00 A.M.

_____
SEN. VICKI COCCHIARELLA, Chairman

_____
ANNIE GLOVER, Secretary

VC/ag

Additional Exhibits:

EXHIBIT(bus64aad0.PDF)

BUSINESS & LABOR
EXHIBIT NO. 1
DATE 3/23/05
BILL NO. HB159

Amendments to House Bill No. 159
3rd Reading Copy

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by Pat Murdo
March 11, 2005 (4:50pm)

1. Page 23.
Following: line 3
Insert: "COORDINATION SECTION. **Section 15. Coordination instruction.** If both House Bill No. 760 and [this act] are passed and approved, then [section 118] of House Bill No. 760, amending 39-51-1301, is void."

- END -

Amendments to House Bill No. 159
3rd Reading Copy

Requested by Senator Vicki Cocchiarella

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by Pat Murdo
March 11, 2005 (4:31pm)

1. Page 12.
Following: line 1
Insert: "(e) expenses for displaced homemaker programs provided for under 39-7-305;"
Renumber: subsequent subsections

- END -